

**STUDENT  
PRESS  
INDEPENDENCE**

**ED/LAW ASSO.**

INDEPENDENCE FOR THE STUDENT PRESS

edited by E.T. Buchanan  
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## INTRODUCTION AND DEDICATION

### SOME THOUGHTS ABOUT "INDEPENDENCE" AND SUGGESTIONS FOR THE USE OF THIS WORK

This introduction establishes the basic definitions of the term "independence".

Most student newspapers today are clearly dependent on the sponsoring collegiate institution. This means that the institution and the paper are legally connected and that the institution may be found legally responsible for the newspaper's acts. The student press is dependent when it receives money, building space, equipment, or personnel on a free basis from the college to support the press.

Independence, on the other hand, requires the newspaper to make it on its own without university resources. If a newspaper is in fact independent, and hence a private enterprise, it would be an abuse of state laws to use public resources to assist in the achievement of private purposes of a private business. Thus, to be truly independent, the newspaper could not accept, nor could the university offer, the following:

1. Human resources
  - a. a university paid advisor.
  - b. any university employees.
  - c. any technical assistance or advice.
  - d. any university employee, acting in his official capacity, serving on the board of directors of the press.
2. Legal resources
  - a. representation in legal matters.
  - b. use of institution's name.
3. Money resources
  - a. student activity or other college administered fees.
  - b. college payment of debts or intercession with debtors.
  - c. other university subsidy, other than for value received.
4. Space resources
  - a. use of campus facilities or space.
5. Miscellaneous
  - a. no college control over
    - 1) content of the press
    - 2) selection or retention of publishing staff.
  - b. preferential treatment of the campus press.

It is argued by Dr. Van Bremen and the NCCPA (pp. I-18 - I-23) that few college newspapers can become truly independent. The economics of the market place put true independence beyond the reach of most college papers.

Many college presses may, however, be able to achieve a quasi-independent status. In this status, the paper is separately incorporated, and no university control is exerted over selection of staff or paper content. Certain competitive advantages may be given to the newspaper, on the theory that a newspaper, like a food service, is an important part of college life. Thus, a college food caterer may, pursuant to an agreement with the college, receive the use of kitchen equipment and facilities rent free, may not pay for utilities, or may even receive a subsidy, in the form of a profit margin guaranteed by the college, even if sales do not generate a profit. Under such an agreement, the private, separately incorporated food caterer has become "quasi-independent."

Quasi-independence is not quite as difficult to achieve as genuine independence, and should be clearly distinguished from the newspaper used as an instructional tool, or the newspaper supported by mandatory fees and controlled by a semi-autonomous student/faculty editorial board.

It is the editor's suggestion that quasi-independence may be the best way to develop a strong and autonomous press. Quasi-independence allows the university and the paper to establish an arms length relationship, to fix legal liability on those who write the paper, and to work toward mutually beneficial ends.

Much hard labor, however, is before the person charged with determining the feasibility of independence or quasi-independence and carrying out such a plan. The editor hopes that this document will serve as a guide through the legal, financial and educational perils.

The user of this work should read the chapters in series, as the work is laid out as a cook book is laid out. Chapter One defines the issues and places these issues in the perspective of one campus. The reader is referred to important resource documents, institutions, and persons.

Chapter Two reviews the case law which has led many college presidents to become interested in independence. Chapter Two is very important, because legal considerations are one of the basic reasons for considering a move to independence, or quasi-independence.

Chapter Three suggests performing a feasibility study, and sets up a checklist for such a study. The feasibility study will determine the "go-no go" option.

Chapter Four assumes that a "go" decision has been made, and presents a check list and a time table for implementation of the "go" decision.

Chapters Five and Six present case studies and sample legal documents from the Florida State, University of Florida and University of Kentucky experienced.

Chapter Seven is a summative conclusion.



The editor cautions the user of this document that following the suggestions of this volume will necessitate much delicate and difficult work. The student press, like student government, is in many cases a sacred cow, and any suggestion of altering the status quo may be met with rhetoric sufficient to overwhelm the faint hearted. A thorough study of legal, financial, and operational questions, done in the best clinical and professional style, will, like an institutional self-study, suggest new approaches to both old and new concerns.

The editor hopes that this document will enable editors, press advisors, administrators, and interested parties to agree that the question of independence ought to be examined in a disinterested fashion, and that the process of examining the question of independence can serve as a thorough review of press resources, administration and operation. Hopefully, such a review will contribute to a strengthened student press.

The editor closes by thanking his professional colleagues at the Florida State University who shared in the development of the concepts presented herein--

Dr. Stephen McClellan, Vice President, Student Educational Services  
Mr. Roger Wehrle, Director, Student Center, Georgia Tech  
Mr. Robert Bickel, Attorney, Florida State University  
Mr. Phil Parsons, Attorney, Tallahassee, Florida

This work is dedicated to Charles Tunnicliff, Esquire, former manager of the Florida Flambeau Foundation, Inc., publisher of the Florida State "Flambeau"; to Professor Melvene Hardee, the editor's mentor; and Susan, the editor's wife.

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March, 1974

## AN OVERVIEW OF THE PROBLEM

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## CHAPTER INTRODUCTION

This chapter presents seven documents which define the issues, and place in a realistic context, the subject of this monograph.

Document I-A is the best overview of the national state of the art of press independence (through the end of 1971) the editor has found. This article is reprinted from the ERIC Research Currents, December 15, 1971.

Document I-B sketches the parameters of the University of Oregon experience. I-B is reprinted from College and University Business.

Documents I-C, I-D, and I-E were the initial documents leading to the movement to quasi-independence of the Florida Flambeau, the student newspaper at the Florida State University. The editor wrote Documents I-C and I-D, and Dr. Lawrence Campbell, formerly a professor at the Florida State University, wrote Document I-E. Dr. Campbell was a member of the Student Publications Board at the time these three documents were written, and took the position that independence might severely damage the newspaper. Thus, the issue at Florida State was drawn, in the final analysis, in legal and economic terms: Would implementation of the First Amendment guarantee of editorial freedoms, leading to the elimination of university money and support, cause the demise, due to financial problems, of the newspaper?

Document I-F is a summary of the findings of a doctoral study undertaken by Dr. Lee Van Bremen, which analyzed the extent to which the student press has and is in fact moving toward independence. Dr. Van Bremen's study was completed in May, 1973.

Reasons for the Van Bremen findings are suggested in Document I-G, The Myth of Saving Money, and The Myth of Selling Subscriptions, reprinted with permission from the NCCPA's 1973 report on the college press "Status, Aspirations, Myths".

Finally, reference must be made to the Duscha and Fischer monograph, The Campus Press, Freedom and Responsibility, available from AASCU, One DuPont Circle, Suite 700, Washington, D. C. 20036 (\$3.50 with prepayment required.) A review of Duscha/Fischer is crucial for the administrator considering independence, as is a review of the National Council of College Publications Advisors report "Status, Aspirations, Myths", available from Dr. John A. Boyd, NCCPA, TMU 300, Indiana State University, Terre Haute, Indiana 47809 (\$2.00 per copy). The editor notes that different writers have reached diametrically opposed positions on the question of press independence, and encourages the reader to invest in both the Duscha/Fischer and NCCPA works.

### Student Newspapers in Transition

by William L. Rivers and Leonard Sellers

In September, *The Daily Californian*, which had been the official student newspaper of the University of California at Berkeley for 98 years, moved off the campus and became independent. Is this another case of assertive Berkeley students pioneering for the cautious on other campuses? Not quite. *The Diamondback* of the University of Maryland went independent at the same time, and *Emerald* of the University of Oregon had announced its independence three months earlier. By some standards, California, Maryland, and Oregon have been timid. *The Cornell Daily Sun* has been published by an independent corporation since 1905, and several other student papers, notably in the Ivy League, have been independent for decades.

It is nonetheless clear that for the collegiate press the 1970s may some day be considered the period of independence. In addition to the papers that have recently struck out on their own, others are moving toward independence — or talking about it — on campuses all over the country, among them the University of Alabama, the University of Georgia, North Carolina State University, the University of Texas, Stanford, the University of Iowa, and Wisconsin State University.

The trend is not surprising considering the tide of activism that has led to greater freedom in everything from casual clothes to grading systems. Some administrations welcome the approach — and even promote it. At Stanford, President Richard Lyman has encouraged the *Stanford Daily* to move toward the independence that has been the stuff of dreams for editor after editor for several years. The staff members of the Maryland *Diamondback* may even now be asking, "Did we move or were we pushed?" They yearned for an independent paper. So did the Board of Regents, who ordered the paper to become independent.<sup>(1)</sup>

At Washington University in St. Louis, an editorial appeared in *Student Life* in 1970 lamenting that "the Board is going to shove this 'independence' business down our throats. . . . If the Trustees care about a better newspaper, they should give us more money and hire professional journalists to establish a journalism school at WU."<sup>(2)</sup> Disgusted with what one member called "massive tastelessness" in the *Minnesota Daily*, the Board of Regents of the University of Minnesota appointed a committee in 1970 to study the possibility of forcing independent status on the paper by removing student fee support.<sup>(3)</sup>

In the days when most college papers were combination bulletin boards and publicity organs for campus queens, administrative officials and regents (or trustees) were sometimes miffed and occasionally inflamed by editorial indiscretions. The governing boards of that time either knew how to handle "the upstarts" who took the First Amendment

seriously or learned how to live with them. Now, however, with many campus journalists believing it their duty to analyze issues like abortion and communal living, advocate free pills for coeds from the student health center, write sympathetically about homophile movements, support student strikes, dig up data on university relationships with the Department of Defense, and poke about in tenure policies and the oligarchical tendencies of boards of regents and trustees, anyone who tries to put out all the fires springing from campus editorials would have little strength left for other burdens.

#### *Wanted: independence and funding*

There are compensations these days for trustees and administrators who have been burned so badly that they decide to give up and grant student editors the freedom they profess to want. One is that given the opportunity to publish independently, and the challenge it presents, many an editor decides that the world out there is a cold, wet place, and rather than leave the shelter altogether, he prefers to stand under the eaves. That is approximately the stance of *The Daily Californian*, which got into trouble last spring by urging students to liberate a small plot on the campus known as "People's Park." The liberation movement became a riot, and three editors were fired. Although the paper is now independent, it is partly sheltered by a university payment of \$20,000 a year for 2,500 subscriptions. Independence is not impaired, but the university provides a safety that rival papers do not enjoy. Examining several other independent college papers reveals that they are similarly subsidized, often by free office space and equipment.

Another compensation for the wounded is that the editors of many student papers that have been granted freedom from the university administration and are supported by funds from student government find that one authority structure may be as oppressive as another. In some cases, editors who thought

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they could settle into a happy relationship with student leaders — who, after all, would be expected to share their concerns — have found that authority figures are authority figures even if they're only 20 years old. At Alabama, the Student Government Association denied funds this year to both student magazines and cut the budget of the newspaper, the *Crimson-White*. Despina Valentis, editor of the *Crimson-White*, reported that he and the magazine editors now favor direct funding by the administration.

At the Colorado School of Mines, the student council fired the editor of the newspaper for printing an obscenity even though the school president said he was willing to give the editor another chance. The editor claimed he was fired because of personality conflicts with council members.

### *Paper politics at San Francisco State*

Chief problem for many papers linked to student governments is the activist student politician who is eager to seize power, especially editorial power. Although San Francisco State College is not typical, recent events there show in exaggerated form the forces that worked changes in some student newspapers and destroyed others.

In November 1968, nine members of the Black Students Union invaded the office of the San Francisco State College *Gator*, beat up the editor (who had to be hospitalized), permanently injured a part-time faculty member, and in a brawl with the staff nearly demolished the newsroom.

This was the culmination of long battles between the Department of Journalism, which operated the *Gator*, and Associated Student Government. Beginning in the late 1960s, radicals began taking over the government. The *Gator* was funded by student fees doled out by student officials, who demanded a voice in running the paper. They presented to the Board of Publications their own candidates for editor.

The editor had long been chosen by agreement of the *Gator* staff and journalism faculty members, with the Board doing little more than rubber-stamping the nominations. Board members were made uneasy by the challenge from student leaders, but they continued to approve the selections made by the staff and the journalism faculty.

Student officials then threatened deep cuts in *Gator* funds, charging that the paper was racist. Journalism teachers began to look for support among other teachers and administrative officials, and found none. It was clear that some who were asked for support were simply avoiding a fight; but others professed to believe that if the *Gator* was accused of being racist, it must be racist.

Then came invasion of the newsroom. Despite the injuries and damages, there was little disposition to support the paper. The administration was even reluctant to press charges against the BSU members. Knowing that it was only a matter of time until funds for the *Gator* would be cut drastically — or cut off — Dr. Leo Young, chairman of the department of journalism, visited the state capitol and cajoled state officials into promising funds for a laboratory newspaper for the department — but not until the following year.

Dr. Young moved ahead anyway, turning over to student government the name "*Gator*" and the label "official student newspaper." Using its own sharply limited funds, the journalism department founded a weekly laboratory newspaper, *Phoenix*.

The *Gator*, with its annual budget of \$37,000, was taken over by student government, which was dominated by Students for a Democratic Society. The paper became a radical

house organ paying its staffers handsomely by college standards but carrying nothing that could be defined as news. When the lengthy San Francisco State College strike began on November 6, 1969 (one year to the day after the invasion of the newsroom), the *Gator* was not so much a newspaper as it was a war cry. *Phoenix* was the only campus channel for objective coverage.

In the spring of 1970, the investigators for the State Attorney General discovered that student funds were being used to buy guns. The funds were then tied up by court order. Later that semester, in reaction to the strike — and perhaps because *Phoenix* coverage of student government turned up Tammany-like tactics — a conservative student government slate was elected. The new leaders (who had only a name because student government funds were still impounded) threw the *Gator* out of student offices. Without an official home, and with *Phoenix* launching an advertising sales drive that lured 90 percent of the advertising revenues, the *Gator* all but died.

Now, the *Gator* appears infrequently as a radical handout, and student government has started a four-page weekly tabloid, *Zenger*. Although *Zenger* has a university budget of \$25,000 a year, it is so dominated by opinion pieces that most students turn to *Phoenix*, which has a budget of only \$7,200, to learn what is happening at San Francisco State College.

These incidents suggest more than that abrasive relations between student politicians and student editors can become explosive. They also point to fierce factionalism. At the University of North Carolina, the Committee for a Free Campus Press urged students to withhold the \$5.50 fee that supported the *Daily Tar Heel*, questioning "the right of the university to tax students for support of an institution with which they don't agree." (At the same time, the paper was the focus of two investigating committees, one appointed by the Student Legislature and the other by the Chancellor, both looking into *Tar Heel* funding.)

The factions are so dedicated to their causes on some campuses that they publish their own papers — many on such haphazard schedules that they are spasmodicals rather than periodicals. At Vanderbilt, *The Hustler* was long the only official paper. Then a conservative faction began to issue *Versus* as counterforce. Its chief editorial point for nearly two years was strong opposition to the university subsidy to *The Hustler*. But *Versus* had such trouble publishing — even surviving — that the editors asked for financial help from student fees. *Versus* now receives \$2 from each undergraduate.

Factionalism is part of the reason University of Missouri students can choose from what may be the widest variety of newspapers on any campus. The respected *Columbia Missourian*, which is owned by a non-profit corporation whose members are alumni and former students of the School of Journalism, is aimed at readers throughout the community of Columbia and Boone County. Journalism faculty members and students staff the *Missourian*, and profits go to the School of Journalism. The *Maneater*, the official student newspaper, has limped from twice-weekly to weekly publication after accumulating a debt of \$17,000. There are two competing weeklies, *The Issue* and *The Courier*, both published off-campus. A fifth paper, *Blackout*, is published by black students and supported by university funds. In theory, *Blackout* is issued twice a month, but it does not always publish as scheduled.

All the above information was gathered from news stories and editorials in student publications, from interviews, and

from a correspondence survey of 50 colleges and universities conducted by these writers. The research literature on the student press is limited, and by reasonable standards most of it is uneven. Almost nothing that can be described as rigorous research has appeared to point the way through the current confusion, perhaps because the student press is changing so rapidly that researchers are hard put to carry out studies that will be valid by the time they get into print. Administrators and students must rely upon the careful studies that undergird the general subject of the student press rather than searching vainly for those that might provide guides to the future.

### Some useful studies

Those contemplating independence, however, should consider several studies that focus on important areas. A useful study is "Student Press Revisited" by Jean Stevens,<sup>(4)</sup> who holds that three factors have prevented the student press from achieving broad press freedoms:

- Few campus papers have achieved the financial independence that might guarantee their autonomy.
- The established press has not fully committed itself to the cause of the student press.
- The courts have not yet determined the extent to which First Amendment guarantees apply to student publications.

This analysis springs from a wide range of studies and actions that are reviewed under these subheadings: Campus Press 1971; Free Press Principles v. Practices; Freedom and Responsibility; Conflict Analysis; Obscenity and Morals; Tax Exemption; Preventing Controls; Established Press; Ultimate Solution: Courts; and Conclusion. Like most Freedom of Information Center reports, "Student Press Revisited" is both thorough and succinct. Because nearly all the articles it cites were published in 1969, 1970 and 1971, it provides the best overview of recent studies and actions.

At this writing, the Stanford Workshop on Political and Social Issues (SWOPSI) is completing a fairly comprehensive report on the problems of independence for student newspapers. In three parts — Legal, Staffing, and Financial — it sketches central problems and relates the experiences of some of the papers that have become independent.<sup>(5)</sup> M.M. Chambers has compiled an excellent report on the court actions involving the student press.<sup>(6)</sup>

Another careful study which is useful for those considering independence is "The Student Press: Guidelines for College Administrators" by Annette Gibbs,<sup>(7)</sup> which may be as handy for student journalists as for administrators. Dr. Gibbs, associate dean of students at the University of Virginia, analyzed the studies and position papers issued by organizations concerned with college students' rights and responsibilities: the American Civil Liberties Union, the Journalism Association of Junior Colleges, the National Council of College Publications Advisers, the Commission on Freedoms and Responsibilities of the College Student Press, and the United States Student Press Association. She also analyzed studies made by the American Bar Association Commission on Campus Government and Student Dissent and the California Commission on Campus Newspapers, as well as the "Joint Statement on Rights and Freedoms of Students," which was endorsed by ten educational organizations. From all this and from recent court rulings, she developed ten guidelines:

1. The function of the college student newspaper should be clearly defined and agreed on by the students, faculty, and administrators within the college community.

2. The function of the college student newspaper, as it relates to student freedom of expression, is parallel with the function of the commercial newspaper, i.e., both serve to inform, educate, and entertain their readers.

3. The student newspaper should not be considered as an official publication of the college or university.

4. Students attending state colleges and universities do not forfeit their constitutional rights of freedom of expression.

5. Private colleges and universities traditionally have maintained constitutional independence in that they have been free to censor student publications; however, this private corporate status may now be challenged because of the vast amounts of federal and state funding that these institutions are receiving.

6. Student newspaper editorial policies that promote the lawful educational goals of the college or university are viewed as desirable by the courts.

7. A publications board, composed of students, faculty, and administrators, offers the best method for providing guidance and leadership for the college student newspaper activity.

8. Student newspaper editorial freedom of expression requires student responsibility for presenting news and opinion accurately, fairly, and completely.

9. A professionally competent adviser for the student newspaper staff is desirable for both students and the college administration.

10. The college student newspaper is primarily a medium of communication for students; other opportunities made possible for students who participate in newspaper activities, such as formal course instruction in writing and technical skills, are secondary.

*The Student Newspaper*<sup>(8)</sup>, a booklet that was written as a report to the president of the University of California by his Special Commission on the Student Press, is also wide-ranging, recent, and useful. All of its nine chapters are worth the attention of anyone who is concerned with the student press. Melvin Mencher's contribution, "The College Newspaper," carries both the reflections of an experienced journalist who advises student journalists and the results of a survey he conducted on the financing and goals of college papers. William Porter's chapter, "What Should Be the Role?" is also valuable.

### Key issue is editorial control

The central aspect of the push for independence is the problem of control. Who really runs the campus newspaper? A narrow and strongly focused study is "Control of Small College Student Newspapers" by Bruce Dudley, a survey of 177 small colleges.<sup>(9)</sup> Fifty-one percent of the respondents reported that their papers were under publications boards, and on 51 percent of those, students comprised a majority of the board membership. Two-thirds of the boards choose the editor. Ninety-four percent of all the respondents reported that their papers had advisers, but nearly half of these advisers (48 percent) read nothing prior to publication unless asked to do so by a member of the staff. Offsetting this, however, is the fact that 28 percent of the respondents reported that during the preceding two years someone other than a staff member had barred publication of at least one item or forced significant changes. The items were:

Response	% of Incidents
Criticism of administrative policy	44
Criticism of administrator or faculty member by name or title	22
Story about drinking, dope, sexual freedom, etc.	12

Humorous article poking fun at faculty and staff either in general or by name .....	12
Story about student crimes, on or off campus, giving names .....	8
Story about college disciplinary action against students, giving names .....	6
Possible site of new campus .....	2
You wouldn't believe it .....	2
Formation of Upward Bound program .....	2
Clash between society and independents .....	2
Interview of president .....	2
Criticism of editor of paper .....	2
Calling attention to problems not felt to be significant .....	2
General improvement .....	2
Criticism of catering service .....	2
Humorous article on food .....	2
News story on administrative changes .....	2
Lack of student response .....	2
Satirical column about students .....	2
Questionable ROTC program .....	2
Campus garbage .....	2
Story involving certification .....	2
No answer .....	2

### The reader's vantage point

An area possibly overlooked in the trend towards campus newspaper independence is that of audience. How well read and trusted is the current newspaper, and would independence improve the paper from the reader's point of view?

Research on readership of college papers yields varied results, and not only because the papers themselves are varied. Some campuses are served by more than one student newspaper; and how well campus readers are served by student papers and professional dailies published off the campus often determines the readership of the official student paper. Vernon Wanty, dean of faculty at Middlesex County College, reported a survey of more than 1,000 students of a metropolitan community college showing that 50.8 percent of both freshmen and sophomores get most of their news about the college from the paper, with "student conversation" a fairly distant second (28.8 percent for freshmen, 37.2 for sophomores), and "president's talks" a very distant third (1.3 percent for freshmen, 2.9 percent for sophomores).<sup>(10)</sup>

At Stanford, a report based on 335 returned questionnaires revealed that "on any given day 75 percent of the students, 75 percent of the staff and 78 percent of the faculty will read the *Daily*."<sup>(11)</sup> The paper was voted the most important source of campus news. Frank Miller, news editor of the *Daily* and author of the survey, said that "Students generally felt the *Daily* was reliable in its news coverage; the staff generally agreed; but faculty were extremely critical of the newspaper's reliability — 51 percent feeling that it was below average." The administration-published *Campus Report* was rated more reliable than the *Daily*, the *San Francisco Chronicle* and the *Palo Alto Times* less reliable.

Students who responded to a survey asking their opinions of the University of Washington *Daily* in 1971 rated it more fair but less interesting than its predecessor.<sup>(12)</sup> They rated its accuracy, fairness, interest, and informational quality on the favorable side of "so-so." The students were more favorably disposed toward the paper than toward student government, with 96 per cent feeling either unaffected or unfavorably affected by student government actions. Like the Stanford students, they rated sports news low on their scale of interests.

At Bowling Green State University, the student newspaper contracted for a readership and marketing study with a senior marketing research seminar to evaluate the service to the community by *BG News*. The result is a comprehensive 15-page document.

Readership interest has been considered so important at several universities that press councils have been created. Louisiana State University and the University of Florida both have press councils made up of students, faculty and professional journalists. The councils have no power, but serve as a feedback channel for the newspaper. University of Florida editor Sam Pepper said: "I found the Council quite valuable. Many times I discovered stories which I considered of minor importance to be the ones which received the greatest readership."<sup>(13)</sup>

### Conclusion

Recent research is so sparse and diffuse that it neither finds which direction the fast-changing student press is heading nor prescribes one. It is clear that "independence" is both a strong trend and a danger. The freedom is valuable, but the financial problems are sharp-edged. Administrators as well as student editors can learn hard lessons about the dangers of complete independence by studying the ailing condition of most student-founded papers trying to challenge the established student papers. Many of them represent single-issue journalism, which is seldom successful, and most are dying for lack of dollars.

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DOCUMENT I-B

STUDENT NEWSPAPER ON ITS OWN  
by Teresa Ebert

Independence of student newspapers is an appealing idea to administrators on university campuses across the nation, but for the wrong reasons.

Severing the ties may bandage any bad public relations caused by the campus papers, but basing the decision on public relations is short-sighted. Letting the paper stand on its own feet results in a more efficient operation and in the students' learning responsible journalism and business management.

The University of Oregon's student newspaper, the Oregon Daily Emerald, has taken such a step. Concerned with creating an environment in which the paper could realize its greatest growth, the 73 year-old Emerald became financially and legally independent of the university July 1, 1971.

University Vice President of Administration and Finance Ray Hawk feels, "Independence fixes responsibility on the students in charge. Before, when the university was publisher, it was a big umbrella for the paper. Any time the paper got in trouble, the university, as publisher, was accountable."

The Emerald is becoming more responsible. The paper's editor, Art Bushnell, announced:

"We will not see how many people we can shock just because we are independent. On the contrary, we will have to be more cautious than we might have been in the past. Now if we make a mistake, we are ultimately responsible for it. No longer will the State Board or the University administration be liable for what we print. Instead, it will be we who face any legal action.

We worry about these things a lot more now because it will come out of the paper's money."

The Emerald does not have time for printing blue language and irresponsible editorials. Rather it is concerned about making independence a success.

The increased efficiency in the Emerald's financial control is the strongest evidence of the campus paper's success.

Prior to independence, the Emerald was just a line item on the university's budget, and all business records and transactions were handled by the university business office and Erb Memorial Union. Under this system, the Emerald did not receive any records of its spending or income until two months after the fact.

Inefficiency and overexpenditures were the order of the day. It was impossible for anyone in the paper's isolated office to make current business decisions, because no one knew how much was being spent or even if the Emerald's advertising accounts were making payments. Consequently, the paper could not collect on delinquent accounts. But no one really cared; the university would cover any deficits. It always had.



Because no one is going to bail the Emerald out now if it runs up a deficit, the new publishing board and business manager are carefully watching the budget. The business manager keeps his own set of books and initiates cost control, keeping records of inventory, assets and depreciation of assets. He is aware of current balances and personally oversees payment on all invoices.

The news staff, too, is budget conscious. The editor now oversees most of the news-side expenses and keeps inventory of such supplies as photo equipment. These procedures were simply ignored prior to independence. Staff members are even bringing their own coffee cups in order to cut the cost of buying plastic ones.

But the students have done more for the Emerald's independence than save the price of coffee cups. They engineered and enacted the paper's autonomy from the university. The administration and the old publishing board acted as guide and sounding board for the students, who proved they could responsibly organize a non-profit corporation, separate from the university.

First, the crucial question—who would be publisher if the Emerald decided to go it along?—had to be answered. Previously, the university president had been the acknowledged publisher of the campus paper, while the old publishing board was faculty-dominated. The students, on the other hand, wanted an all-student board to set policy.

Finally a compromise structure was developed. The new publishing board consists of three faculty members, three Emerald staff members, including the editor, and three students. The board has full publishing rights under the Oregon laws of incorporation.

According to Ray Hawk, "The governing board was set up to ensure balanced input. It has worked out beautifully."

"We are helping to write history. We want to start out on the right foot," says the board chairman, Dick Reynolds, who is also director of the Erb Memorial Union.

Reynolds considers the biggest problem facing the Emerald is the establishment of a reliable cash flow. Previously, the university contributed as much as \$10,500 annually to the Emerald in order to compensate for the decreasing student fee subsidies, which fell to \$18,000 in 1969. The limited student fees forced the Emerald to turn to advertising. The trend toward the Emerald's financial independence was being set; the paper earned 75 percent of its \$113,968 budget through advertising in 1969.

The university is now subscribing to the paper instead of funding it. The student and faculty-staff subscriptions rates are based on annual contracts between the publishing board and the student government and administration, who act in behalf of the students and faculty.

Ray Hawk feels that the revenue from these bulk subscriptions is still a vital part of the Emerald's income. Individual subscriptions would be minimal and ineffective as long as mass distribution points are used to deliver the paper, which is the most effective means of reaching university readers.

This year's budget for the paper is \$135,000: 17 percent of the income is from the \$26,000 student subscriptions and 8 percent from the faculty and staff subscriptions. This means that most of the paper's income must come from its advertising.

Because many advertisers consider student advertising to be "tokenism," the paper dramatically proved the advantages of advertising in the Emerald by presenting prospective clients with a consumer report. According to the research, the University of Oregon community is the most substantial single market in the Eugene area.

According to the report, 73 percent of the students read the majority of the advertisements in each issue of the Emerald and one out of six students reads every one. That's not even counting the expenditures of faculty members who read the Emerald.

#### GENERAL MANAGER

The key to the Emerald's ability to acquire its 300 advertising accounts is the guidance of its general manager, Al Phelps.

The position of general manager is one of the innovations made since independence. He is a full-time professional who oversees the entire production and business management of the Emerald, and is providing the continuity and experience the students need.

Phelps is beginning training programs for advertising salesmen in an attempt to show them the value of display advertising and hard selling. He is also teaching them some hard lessons of life. If an account is 90 days over due, the advertising department knows it, due to the increased efficiency of the business records. The advertising department then pressures these delinquent clients for payment.

According to Phelps, "Building an independent newspaper takes years and years of concentrated promotion."

"One of the advantages of having a general manager with Al Phelps' experience is the ability it gives the Emerald to plan and carry out long range promotions such as sports specials and other commercial printing," according to the student business manager, Marcus Wright, who feels the Emerald is a potential money maker. Wright feels that increased advertising revenues will enable the Emerald to net reserves of \$10,000.00 to \$15,000.00 in its first year of operation.

The profits will be placed in a trust fund this year, instead of reverting back to the university. The reserves will enable the Emerald to purchase new equipment and eventually its own press. The rest of the revenue will be invested to build up the capital reserve.

UP, UP, UP . . .

Although the Emerald has increased its income, its costs are also rising

with independence. The paper is having to pay for such university services as office space, at a fee of \$1.50 per square foot.

One of its major expenses is the staff, which includes over 100 students. These staffers are paid according to department. Students working in advertising receive 12 percent commission on their sales, while the advertising manager receives a monthly salary of \$160.

On the news side, the chief editor is paid \$225. per month. The managing editor, two news editors and a photo editor receive \$60. monthly. The reporters and photographers are paid per story or picture. The night editors are paid \$10 a night and the desk editors ear \$4 a night.

Circulation includes one person who is paid \$13 an issue.

Production, which involves cold type composition, employs about ten students who are paid \$2 per hour.

Finally, the general manager, who has had 35 years of professional newspaper experience, earns a monthly salary of \$1100 for his full-time job.

Another added expense is liability insurance. Previously, the Emerald was covered by the university's policy. The Emerald had difficulty finding an insurer in the commercial market, but with the help of good attorneys it now has extensive liability coverage. Liability insurance, including publisher's liability, costs the Emerald \$1,122. And the attorneys are costing money too.

The expenses may have increased with independence, but so has the size of the paper. With an average daily press run of 10,500, the Emerald is the 12th largest paper in the state. This year's fall term "Student Orientation" issue ran 156 pages, tabloid size, more than double the highest number of pages ever printed in any one issue. That one issue netted \$2,000. profit.

#### WHO ELSE?

The first independent student newspaper on the West Coast, the Emerald is serving as a guide to other campuses. Student papers, such as the University of Florida's Alligator, have turned to the Emerald for advice in becoming independent.

Other independent student newspapers include The Daily Californian of the University of California at Berkeley and The Diamondback of the University of Maryland; both went independent in September, 1971. Many of the Ivy League schools, on the other hand, have had independent newspapers for years. The Cornell Daily Sun has been on its own since 1905.

A number of universities are presently considering independence for their student papers, including the University of Alabama, the University of Georgia, North Carolina State University, the University of Texas, Stanford, the University of Iowa and Wisconsin State University.

Art Bushnell has paid high tribute to the administration's cooperation.

He says, "Ray Hawk has been the Emerald's best friend through the entire move to independence."

Hawk feels that independence develops responsible journalism and the "time to learn that is now, while students are still involved in the learning process."

Referring to other administrators, Hawk says,

"Although this attitude is not representative of the university, some administrators may not want to give up control of the paper. But control of the newspaper is not the issue here. The needs of journalism, not of the administration, should dictate control over the paper."

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A POSITION PAPER ON THE FUTURE OF STUDENT PUBLICATIONS  
AT THE FLORIDA STATE UNIVERSITY  
APRIL 19, 1972

THE PROBLEM.

The university president's inability to exercise controls consonant with his legal role of newspaper publisher over news stories, editorial policies, and advertising in The Florida Flambeau.

WHY THE PROBLEM EXISTS.

The necessity and reasonableness of regulations restricting the exercise of First Amendment freedoms on campuses have come to be measured in light of the test enunciated in the Tinker case, to wit, the exercise of such freedoms may be sanctioned only when the activity presents a material and substantial disruption of the normal activities of the institution. Moreover, the definitions of obscenity which obtain for publications have generally been applied to material printed in the student press, with the result that school authorities are not allowed to prevent the publication of any material which does not create a clear and present danger of a material and substantial disruption of the normal operation of the institution. Several suits have been successfully challenged attempts by school administrators to either restrain in advance the publication and distribution of certain literature, or to take punitive action against students engaging in such activities subsequent to the activity. These cases point up the general trend of the courts in guaranteeing the First Amendment rights of students.

In sum, while the institution may be charged with the responsibility under the law for libelous or other ill-advised actions by members of the student press, the First Amendment erects a substantial barrier to effective supervision of the student press.

MODELS FOR RESOLVING THE PROBLEM.

The following models have been offered in response to this problem.

1. Add professional journalists to the staff of the student newspaper.
2. Have the student newspaper printed by the administration of the institution; eg. the editor hired by the administration.
3. Lease the space and facilities currently used by the newspaper to a non-profit independent corporation, which would contract to produce the newspaper. Enter into a bulk-subscription arrangement with the corporation.
4. Remove all institutional support from the newspaper, compel it to move out of university facilities, and terminate financial subsidization of the paper.

CONSIDERATIONS AFFECTING EACH MODEL1. Editorial Manager-Professional Consultant Model.

In 1969 the university Task Force on Student Publications proposed the addition of a professional journalist to the Flambeau staff. Such a person was hired, but left in December, 1971. Upon his departure, a member of the English faculty with no journalism experience was tapped for this role on a released time basis. This faculty member's lack of journalistic experience limits his ability to serve as a professional journalism consultant, and it is doubtful that we have the resources to hire a professional person to serve as an editorial manager. Even if resources were available, the addition of professional journalists still might not solve the problem.

2. In-House Publications Model.

Several institutions have moved to this model. The creation of an alternative in-house publication has not, however, been seriously explored, for the reason that the institution of such an alternative paper in no manner removes the problem which this institution currently faces.

3. Lease-Bulk Subscription Model.

A lease of facilities and equipment and a bulk subscription agreement represents a partial response to the problem. A lease-bulk subscription agreement must involve an "arms length" relationship between the newspaper and the institution, with full fair market value being paid to the institution for space, equipment, and utilities, and by the institution for papers. A lease arrangement would not cure our current inability to give editorial, news, and advertising guidance to the Flambeau. However, such an arrangement would reduce institutional liability and responsibility for inaccurate news stories and involves far more manageable costs for the newspaper. Estimated short run costs to the newspaper of lease-bulk subscription for one year:

Physical Facilities, including space & equipment	\$9,000.00
Activity and Service Fee Deficit	\$60,000.00
	<u>\$69,000.00</u>

4. Non-Subsidized Model.

This model involves the removal of all institutional support, including space, equipment, and student activity and service fee monies. The key consideration in moving to this model is money. It has been estimated that implementing such a model would necessitate the generation of \$150,000-200,000 for start-up expenses. The only possible source of such monies appears to be commercial lenders, and it is extremely doubtful that a commercial lender would advance funds to an entity as risk-prone and as collateral-less as a student newspaper. Also, it is doubtful that the planning for this model can be accomplished in the space of the few months remaining before the Fall '72 term. Estimated short run costs to the newspaper of immediate separation:

Elimination of Activity and Service fee monies	\$88,000.00
Acquisition of Physical Facilities	36,000.00
Equipment Acquisition	55,000.00
	<u>\$179,000.00</u>

RECOMMENDATION

Move to a lease-bulk subscription agreement for a ten month term at the beginning of the Fall of '72, with university space and facilities to be deemed unavailable after July 1, 1973.

DOCUMENT I-D

Letter to Chairman of Student Publication Board Stating  
Intent to Begin Working Toward Independence

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April 25, 1972

Chairman  
Student Publications Policy Board  
University Union  
Florida State University

Dear Chairman:

In a recent conversation with the president, I raised the matter of the relationship between the student press and the president -as- publisher. I advised the president that legal research undertaken by my office, together with the April 18, 1972 Opinion of the Attorney General of the State of Florida (Number 072-138) and a search of the literature on the subject of the student press performed by my office had led me to the conclusion that the current relationship between the president-as-publisher and the student press is no longer viable. The president agreed with this conclusion, and asked me to plan and implement a program which would discontinue the current relationship at the earliest possible time.

The president reminded me that effecting a change in the current relationship may well be a time consuming process, as Board of Regents approval may be necessary.

In thinking about this matter, it occurred to me that there appears to be general agreement across the face of the campus, in the Attorney General's Office, and across the country that the current relationship is not viable. The Attorney General's opinion was followed by an editorial in the April 24, 1972 Flambeau, which editorial supported a change in the relationship. A number of colleges, including Stanford, Maryland, and Wisconsin, have moved student publications to a posture of independence.

Inasmuch as legal authority, local opinion and the national trend appear to support a change in the status quo, I have advised the president that our goal should be the moving of student publications to an independent posture at the earliest possible time, and he has concurred in this judgment.

To begin to effect this goal, I would like to meet informally with you early next week. At that meeting a summary of the results of this office's research on student publication on college campuses across the country will be made.

Sincerely,

Vice President for Student Affairs

## DOCUMENT I-E

Response to Document I-D by Faculty Member  
of Student Publications Policy Board  
Dr. Laurence R. Campbell

### 1. Proposed Status

I hope that the discussion will clarify the meaning of "independent" status. We seem to face the possibility of making one of three choices:

- a) Present status. Even this status needs clearer boundaries.
- b) Independent status. Precisely used, this term means that the University and the publications in general or the Flambeau in particular would sever relations. The publication(s) would move from the campus to "sink or swim" financially and editorially.
- c) Some other status. Presumably the term independent is being used to refer also to some indeterminate status in which there may be some form of operation other than the two noted. All concerned should know what this other status is.

### 2. Decision Making

If this discussion is undertaken in good faith, then we assume that the publications board—if it has a reason for existence—has the right to decide:

- a) Whether it will or will not seek some other status.
- b) When it will be ready to proceed with some other status.

To put it bluntly, I hope that we are not being told that "this is it" after a given date. Yet should that be the case, such discussion would be a waste of time and members of the board might direct their energies elsewhere.

### 3. Complete Independence

Independence, if course, is complete. The University under the true meaning of the term would wash its hands of the publication(s):

- a) It would no longer involve itself in collecting funds for transfer to our account.
- b) It would no longer involve itself in accounting, auditing, or concerning itself with our financial needs or problems.
- c) It would no longer accommodate us in purchasing supplies or equipment eliminating any prospect of discounts in acquisitions.
- d) It would continue to be unresponsive to the Flambeau's need for depth instruction in printed media techniques, for under the new condition

it could disclaim any responsibility for quality publications.

- e) It would no longer provide us with space for our operations or cover the costs for maintenance, utilities, custodial service, etc.

#### 4. Financing

Business enterprises must be solvent to survive. Student publications are no exception. They are not immune to the eroding effects of inflation. Neither is the athletic program which has been receptive to greater financial support.

Student publications have two main sources of revenue:

- a) Advertising. This source is insufficient—as reports indicate—to serve as a sole source of revenue. Its rates currently are based on the assumption that virtually every student can get a copy of the Flambeau.
- b) Circulation. In our situation circulation revenue consists of that portion of percentage of student fees assigned to publications.
- c) Other revenue. Some money from other sources may comprise a small amount, but not a substantial amount.

It is my impression that the administration—despite inflation—would like to see a reduction of circulation income as above defined. The rationale for reducing financial support so far has escaped my attention. The justifications for such a position are:

- a) It wants some of the money for something else.
- b) It wants to weaken the publications by inducing economic malnutrition.

Certainly these facts are clear:

- a) Production costs are increasing, not decreasing.
- b) Other costs are increasing, not decreasing.
- c) Few small dailies charge less per copy than ten cents. Some charge more. The Flambeau surely should get at least five cents a copy. If we enroll 15,000 student at \$1 a month for nine months, we will see that publications should receive more support, not less.

Now if we change to an "independent" status, we shall have increased costs:

- a) In purchasing
- b) In renting space
- c) In promoting circulation
- d) In collecting subscriptions money.

It is probable that circulation would plummet, for students have been led to believe that they pay less than \$2 a year for the Flambeau when actually \$2 a quarter is too low—unless we want to weaken or destroy the newspaper.

Indeed, we may have to consider the possibility of a 4000 circulation which would drastically reduce our income and, therefore, necessitate an unfavorable change in the advertising rate structure.

What would happen under these conditions:

- a) News services would have to be curtailed
- b) The newspaper would have to become a weekly
- c) The editors might stress advocacy journalism, an adversary role on the editorial page, and other characteristics of either sensational or background news media.

The problems of financing student publications make it imperative that we determine:

- a) Whether the administration wants a quality newspaper or a shadow newspaper.
- b) Whether the essential financial nourishment of the student press will be guaranteed.

If there is a desire for responsible journalism on this campus, then it should be the same kind of support that we give to athletics. Hence, any step toward "independence" should be made with a very accurate and precise understanding of what the consequences are.



## DOCUMENT I-F

### SURVEY OF EXTENT TO WHICH INDEPENDENCE HAD BEEN ACHIEVED Van Bremen

This is a summary of the data collected from chief student personnel officers and student editors from a random, stratified sample of 188 four year institutions. The principle student newspaper at each institution was classified as legally and financially independent (Type C), editorially independent but legally and financially dependent (Type B) and editorially, financially, and legally dependent (Type A). Institutions were divided into categories: public nondoctoral, public doctoral, private independent and private dependent. Institutions were further classified as small (less than 5,000 full-time students), medium (5,000 to 9,999 full-time students) and large (10,000 and more full-time students).

#### Introduction

Separate questionnaires were sent to student editors and chief student personnel officers at 188 four year institutions chosen as part of a stratified random sample. Eighty-five percent of the questionnaires sent to the chief student personnel officers were completed and returned. Seventy-one percent of those sent to the student editors were returned. This summary report contains only a partial analysis of the collected data.

#### Distribution of Types of Student Newspapers

Despite all that has been written about the growing independence of student newspapers, there is little empirical evidence of statistical significance from the results of this study to support that thesis. Less than ten percent of all principle student newspapers in this study were classified as independent (Type C). At medium independent institutions the percentage of independent newspapers was thirty-three percent; at medium independent institutions twenty-three percent; at large public doctoral institutions twenty percent. Several subgroups used for this study had no independent student newspapers.

Although there has been a large percentage increase (not statistically significant) in the number of independent newspapers in the last five years, independent newspapers remain as a small percentage of student newspapers. More of the recently independent newspapers are at public institutions as opposed to the more established independent newspapers which tended to be at private institutions.

While many deans and editors reported that they thought independence would be desirable for their newspapers, a much lesser percentage predicted that their newspapers would become independent by the end of the 1973-74 academic year. When the replies of deans and editors at the same campuses were matched, a negligible percentage of the matched-pairs predicted independence for their student newspapers.

### Present Status and Trends

This study found no statistically significant changes in the patterns of control and financing of student newspapers in the last five years. However, almost all of the reported changes from 1968 to the present indicate a shift to more control of principle student newspapers by student and by groups with a student majority. There tends to be somewhat more editorial control of the principle student newspapers by students at private than at public institutions.

There are now fewer student newspaper advisors than in 1968. And these advisors now have less control over finances and the establishment of editorial policy and are less likely to read copy before publication than in 1968. Presidents, faculty, and deans of students are less important in the selection of advisors than they were in 1968, and faculty members are less likely to serve as advisors. Presidents, student governments, and journalism departments are somewhat more important in the selection of faculty advisors at public than at private institutions.

Staff are now more important in the selection of editors than in 1968 and more so at private than at public campuses. Publications boards are more important at public institutions. However, publications boards are more likely to have fifty percent or more students at public institutions than at private institutions.

Newspaper staffs are now more important in the establishment of editorial policy than in 1968 and editors are more likely to be the final authorities for the approval of copy. Although there has been more gain for the editors at public than at private campuses, editors at private institutions still have more authority in these areas.

Advertising and student fees controlled by the student governments still remain as the two most important sources of income for student newspapers, and there have been slight percentage gains for both of these since 1968. The number of independent corporations as publishers has gone up and the number of colleges/universities as publishers has gone down.

Editors report more removal of student editors and more suspension of their newspapers than do deans. Both report the 1970-71 year as most important for both of these processes. This might indicate that the period of most intense overt conflict about student newspapers has now passed. The deans are more likely to emphasize the active involvement of the president in these activities than are the editors.

### Attitudes of Deans and Editors

Deans and editors generally agreed on the three main purposes of a student newspaper: (1) report campus news; (2) provide open forum for expression of ideas and opinions; and (3) provide experience for potential journalists. Editors at public doctoral institutions were the most likely of all subgroups to list promote political and social change.

Forty-two percent of the matched-pairs of deans and editors agreed on

the major purposes of a student newspaper. The most agreement between deans and students was a religiously-affiliated campuses and medium-sized campuses and the least agreement at public nondoctoral campuses.

Editors and deans agreed on recruitment and training of staff and financing as the two major problems facing their principle student newspaper. Deans as a whole ranked balancing political perspectives represented by staff as number three while deans at religiously-affiliated campuses ranked this item number three. Editors as a total group selected "other" as number three while editors at public nondoctoral institutions selected gaining editorial independence from administration as number three. However, only thirty-seven percent of the matched-pairs of editors and deans at the same campuses agreed. Seventy percent of these chose recruitment and training and twenty-seven percent financing. Financing was also indicated as the major reason by deans and editors why their principle student newspaper is not now independent.

(The entire study is available from University Microfilms, Inc., Ann Arbor, Michigan.)

## DOCUMENT I-G

### THE MYTH OF SAVING MONEY; THE MYTH OF SELLING SUBSCRIPTIONS National Council of Collegiate Press Advisors

Money is tight on the campus. Budgets are being squeezed. Appropriations are down. Donors are fleeing. Enrollments are dwindling. Inflation is cruel. An anti-intellectualism is selling the belief that one or two years of technical or vocational post-high school study is the ultimate for most young people in contemporary society. Bruises are healing well from the days of violent campus demonstrations but the memory is still a frightening specter. And the underground press, with its romantically incorrect name, simply has run out of steam for the time being.

College administrators and board members look at shrinking funds, piled in smaller budget piles. They take a bit from here and there to bolster the crises and urgencies every month brings.

They remember the attacks made on the campus standard press and begin to attach credulity to that attack. Some believe students really don't want a campus newspaper, or yearbook, or magazine. This is an astonishing conclusion, especially to be made by a college president who makes speeches about the need for communications on the campus, in the nation, and around the world.

But greedy eyes say—take some or all of the money away from the student publications which aren't very important, or very popular, or always carried an implied threat anyhow. That money can be used better elsewhere.

Frequent theme of advocates of no student fee money for the student publications pictures an analogy wherein the student newspaper (or yearbook or magazine) should earn its circulation by selling subscriptions like the commercial press does.

Most commercial newspapers do sell subscriptions (some do not). Daily newspapers charge readers 50 to 75 cents per week. After they pay the costs of the newsboy or sales contractor, the distribution truckers, the office staff, the record keepers, etc., the net income from circulation dwindles to very little. Newspapers seldom receive as much as 25 per cent of their income from circulations.

For example, the Booth newspaper group in Michigan operates eight daily newspapers. These had an operating revenue of \$73,027,974 in 1972. Of this amount only \$16,157,040, or a little more than 22 per cent came from circulation income.

As for the college press, here are two case studies.

Paper A is located in a large university with 40,000 students. It manages to sell about 8,000 subscriptions annually. Student subscriptions are 40 cents per week or \$6.00 per month or \$12.00 per student per year. (Summer terms are extra.)

Paper B is located in a middle-sized university with 15,000 students. It distributes 14,000 copies daily on campus distribution racks. It receives a student fee allocation of about \$2 per semester or \$4 per year per student. Thus the daily paper in college B cost each student \$8.00 less than the students in college A.

Both papers are well-written and edited. The level of communication value of each paper is excellent. Unfortunately, paper A, no matter how hard it tries, cannot raise the level of circulation. That level has remained at the same percentage for nearly 40 years. Paper B actually serves its campus much better.

This isn't the real tragedy for paper A. Each year it sells about \$100,000 to \$110,000 worth of subscriptions. But to sell, account, service, deliver, and police these subscriptions, paper A has to spend about \$100,000. This leaves a balance of less than \$10,000 to use to produce the paper itself.

Paper B receives about \$90,000 annually from student fees. It spends less than \$10,000 to distribute its paper. Thus it nets more than \$80,000 annually to produce and improve the paper.

These are actual case studies. Similar data would develop from other comparisons. As a result of the small return from subscription income some papers rely on advertising income only and distribute papers on distribution racks for everyone anyhow. This increased circulation justifies higher ad rates and improves the communicative function of the paper. Such a plan can work only in situations where a large community of retailers need the campus paper to reach a large student enrollment, and if a full-time advertising staff is employed. In middle-sized and small colleges, the advertising-only income plan would not be sufficient.

If student fee allocations are not available, many colleges would have skimpy papers with small circulations. Ambitious staffs turn to sensational content to stir up readership and hopefully to sell a few more subscriptions. This effort has never worked out very effectively for either student or commercial newspapers.

Commercial newspapers do not experience great fluctuations in circulation. The strength of their circulation depends upon home delivered copies in the city and its immediate retail trading area. This is the circulation advertisers want. A careful check is made of this quality circulation by the Audit Bureau of Circulations, a national agency. Scare headlines or sensational stories have little or no effect. Circulation is the result of several factors. One of these is the highly skilled and well-paid newspaper executive circulation director. (Campus papers really do not have such people available.) In all but a few cities, the commercial paper is the only newspaper available to the community. Housewives shop the ads constantly and buy the paper for them. People develop the newspaper habit which means they subscribe automatically. Most commercial newspapers reach 80 to 95 per cent of all possible subscribers in their communities.

College newspapers cannot develop that percentage because their clientele is far more mobile than that of a typical town. Average longevity of a

college student is about two years. It's hard for him to really settle into many habits during that time.

Many college students are housed in dormitories, fraternity houses, or sorority houses. An amazing variety of restrictive rules about selling subscriptions and delivering papers exist in the 2,800 colleges of the land. No such a maze was ever faced by a commercial newspaper in its community.

It is grossly unwise to expect a campus newspaper to do with a handful of students what it takes a commercial newspaper to do with a complement of full-time circulation executives, bookkeepers, managers, supervisors, drivers, and news-boys and newsstand dealers to manage. There simply isn't enough time or money available on the campus to do it that way.

SUMMARY

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The optimism expressed in Documents I-A, I-B, I-C and I-D for the concept of independence appears to run aground on the hard rock of financing in Documents I-E, I-F and I-G. While Duscha and Fischer argue for independence, the National Council of College Publications Advisors has taken the position that independence and financial self sufficiency are both "myths".

The editor recommends a thorough review of both Duscha/Fischer and the NCCPA documents, and contact with institutions which have recently managed a transition to independence—or some brand thereof. Such institutions include:

Stanford University  
California, Berkeley  
University of Colorado  
University of Oregon  
University of Maryland  
Florida State University  
University of Florida

The editor particularly encourages contact with the press advisor at the University of Kentucky—Ms. Nancy Green. Ms. Green has very successfully managed the transition to independence at Kentucky, and is a thoroughly capable and experienced professional.

Concurrently with ordering the Duscha/Fischer and NCCPA works, the reader will want to review the legal literature, and begin planning to determine the feasibility of independence. Chapter Two reviews the case law base for independence, while Chapter Three is a check list for the feasibility study. The results of the feasibility study will determine the "go—no go" decision. Chapter Four assumes a "go" decision has been made, and is a check list and time table for implementation. Chapters Five and Six present case studies and legal documents from the Florida State and University of Florida experience. Chapter Seven is a conclusion and summary.

## Chapter Two

### Legal Background

1. CHAPTER INTRODUCTION
2. AUTHORITY OF PRESIDENT TO CENSOR/REVIEW CONTENT OF PUBLICATION
  - II-A. Antonnelli v. Hammond, 308 F Supp. 1329 (D. Mass., 1970).
  - II-B. Dickey v. Alabama State Board of Education, 273 F. Supp. 613 (M. D. Ala. 1967).
3. OBSCENITY
  - II-C. Papish v. Board of Curators, 93 S. Ct. 1197 (1973).
  - II-D. Thoren v. Jenkins, F. 2d (4th Cir. 1973).
  - II-E. Bazaar v. Fortune, 476 F. 2d 570 (5th Cir. 1973).
4. LIBEL
  - II-F. Tort Liability of a University for Libelous Material In Student Publications, 71 Michigan Law Review 1061 (1973).
5. RACIAL DISCRIMINATION
  - II-G. Joyner v. Whiting, 341 F. Supp. 1244, 477 F. 2d 456 (1973).
6. RELIGIOUS DISCRIMINATION
  - II-H. Panorella v. Berenbaum, 327 NYS 2d 755 (1971).
7. USE OF MANDATORY STUDENT ACTIVITY FEE TO SUPPORT NEWSPAPER THAT SOME STUDENTS DISAGREE WITH.
  - II-I. Veeder v. Schwartz Kopf, 353 F. Supp. 149 (D. Neb. 1973).
8. PAPER DEFINED AS "INSTRUCTIONAL TOOL"
  - II-J. Trujillo v. Love, 322 F. Supp. 1266 (D. Colo. 1971).
9. DISTRIBUTION OF UNDERGROUND PAPER
  - II-K. Channing Club v. Board of Regents of Texas Tech University, 317 F. Supp. 688 (N. D. Tx. 1970).
10. SUMMARY



## 1. CHAPTER INTRODUCTION

The First Amendment to the U. S. Constitution reads, in pertinent part:

Congress shall make no law . . . abridging the freedom of speech or the press . . . .

The First Amendment has been interpreted to prohibit university censorship of student newspapers in most situations. The cases summarized in this chapter will sketch the situations in which the courts have prohibited a college or university from censoring a newspaper, or from otherwise dealing with the student press in a fashion which is constitutionally prohibited.

The reader will note that the cases presented in this chapter cover a variety of topics which raise the most delicate constitutional questions—obscenity, freedom of speech and racial and religious discrimination.

The questions raised in the cases presented in this chapter are truly major ones, ones which deserve significant legal and public debate.

Concurrent with reviewing these materials, the reader should study Tom Fischer's, "The Law and the Campus Press", pp. 49-115 in The Campus Press: Freedom and Responsibility.

The reader should be advised that the cases set forth in part in this chapter only represent the tip of the iceberg. More than 100 cases and case studies concerning the campus press are on file in the archives of Professor John Behrens, Curator, Student Press of America Archives, Utica College, Utica, New York 13502.

Summaries of these 100 cases and case studies are set forth on page 19 of NCCPA's "The College and University Campus Student Press: Status, Aspirations, Myths", available from Dr. L. E. Inglehart, Department of Journalism, Ball State University, Muncie, Indiana 47306 (\$2.00 per copy).

The editor has reprinted substantial portions of the case summaries prepared by Mr. Fischer.

2. AUTHORITY OF PRESIDENT TO CENSOR/REVIEW CONTENT OF PUBLICATION.

II-A. Antonelli v. Hammond, 308 F. Supp. 1329 (D. Mass. 1970).

Plaintiff, John Antonelli, was a student at Fitchburg State College, a state-supported college in Massachusetts. He resigned as editor-in-chief of the newspaper, "The Cycle", rather than submit his editorial freedoms to an advisory board, created by the college president to review the content of the newspaper for obscene matter prior to publication and to exercise its judgment as to the "responsible freedom of press in the student newspaper." Antonelli had been elected to his position by the student body; "The Cycle" was funded from a portion of the revenues derived from compulsory student activity fees.

The advisory board, composed of two faculty members, was established after the plaintiff had attempted to publish in "The Cycle" an article entitled "Black Moochie," written by Eldridge Cleaver. The theme of the article and its use of four-letter words were objectionable to college president Hammond. He believed that the student newspaper should provide interested students with an opportunity to develop their skills in journalism and should not be used as a vehicle to disseminate obscene matter. The defendant Hammond authorized the advisory board to spend the allocated funds for publication if it concluded that the edition was responsible. Antonelli filed a suit seeking injunctive and declaratory relief, contending that the president's action violated his constitutional rights.

The Court found for the plaintiff. It noted that no standards were established to guide the faculty advisors in reaching their decisions. The board's function was to censor the submitted material for obscene matter. While recognizing that obscenity does not fall within the realm of constitutionally-protected speech, the court noted that before any system of prior restraints can resist constitutional challenge, the censoring body must set up elaborate procedural safeguards "calculated to avoid the danger that protected expression will be caught in the regulatory dragnet." As to what procedures should be constitutionally acceptable the court highlighted the Supreme Court requirements set out in Freedman v. Maryland, 380 U. S. 51 (1965). It pointed out, however, that "nothing of this sort is included in the system devised by the defendants for passing upon the contents of "The Cycle". It said, "The advisory board bears no burden other than exercising its judgments; there is no appeal within the system from any particular decision; and there is no provision for prompt final judicial determination." The Court concluded that the establishment of the advisory board by the defendant was "prima facie an unconstitutional exercise of state power." It also found that the defendant's withholding of funds derived from student activity fees for the publication of the paper could not be employed as a means to stifle constitutionally protected expression.

The case is also significant for the court's suggestion (at 1336) that the obscenity standard on university campuses should be higher due to their more mature, sophisticated populations. (Also footnote 6, p. 1335-36).

II-B. Dickey v. Alabama State Board of Education, 273 F. Supp. 613  
(M. D. Ala. 1967).

In this case the plaintiff, Gary Clinton Dickey, sought a preliminary injunction to compel state school officials to reinstate him as a student in Troy State College on the ground that he had been denied substantive due process in his expulsion and/or suspension from the school. Plaintiff was a student in good standing at Troy State College and had made his intention to continue his education at Troy State during 1967-68 known to school officials. In July, 1967, he was notified by the Dean of Men that the Student Affairs Committee had voted not to readmit him "at this time." Plaintiff sought an order to rescind the school's action alleging in his complaint that he had been deprived of his constitutionally guaranteed rights. The court ordered his reinstatement on the ground that due process required notice and an opportunity for a hearing before a student can be expelled or suspended from a state-supported college or university, citing Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961). In compliance with the court's order Troy State College authorities rescinded their earlier action. They then gave notice to Dickey that he was being charged with "insubordination" and that a hearing was to be held. After the hearing, Dickey was advised that the Student Affairs Committee had voted not to admit him for one academic year. Upon receipt of the Committee's decision, Dickey brought suit for injunctive relief.

The charge of "insubordination" was based on Dickey's refusal to obey the instructions of his faculty advisor and the college president relative to the publication of an editorial which Dickey had written for the school newspaper. In his editorial Dickey praised the president of the University of Alabama for the position he had taken in support of the rights of university students to academic freedom. Dickey was informed by his faculty advisor and the Troy State College president that the editorial could not be published. Disregarding their orders, Dickey published the word "Censored" diagonally across the blank space where the editorial would have been found in the college newspaper and mailed the editorial to a Montgomery newspaper for publication. His alleged "willful and deliberate" insubordination in pursuance of these acts was the sole basis for his suspension.

The court ruled in Dickey's favor. It said that state college officials could not interfere with the student's right to free expression where the exercise of such right does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," citing Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966). The reason why Dickey had been denied the right to publish his editorial was a "rule" of the college president which prohibited the publication in the school newspaper of any material critical of the Governor and the State Legislature. While recognizing that a college must have certain rules and regulations in order to maintain and operate the institution, the court pointed out that these rules and regulations must be reasonable. They held that the rule in this case was an unreasonable exercise of the college authorities' discretion in formulating rules.

### 3. OBSCENITY

Reviewing the litigious last decade, and the large number of student discipline cases, it is a matter of some surprise to realize that the United States Supreme Court has issued a full written opinion on only two "student's rights" cases. Papish v. Board of Curators, 93 S. Ct. 1197 (1973), the first case presented herein, is the definitive case on "obscenity."

Papish, a graduate student in the University of Missouri School of Journalism was expelled for distributing on campus a newspaper "containing forms of indecent speech". On the front cover, the publishers had reproduced a political cartoon depicting a policeman raping the Statue of Liberty and the Goddess of Justice. In addition, the issue contained an article entitled "M..... F..... acquitted", thereafter discussing the acquittal of a member of a New York gang known as "Up Against the Wall M..... F.....".

Following a full hearing, wherein complete due process was afforded, the Student Conduct Committee found Miss Papish in violation of University By-law which in pertinent part read:

Students enrolled in the University assume an obligation and are expected by the University to conduct themselves in a manner compatible with the University's functions and missions as an educational institution. For that purpose students are required to observe generally accepted standards of conduct . . . indecent conduct or speech are examples of conduct which would contravene this standard.

The District Court upheld the dismissal based upon the conclusion that the newspaper was obscene. The Court of Appeals found it unnecessary to rule upon the obscenity issue and instead, assuming that the newspaper would be protected by the First Amendment in the community at large, held that on a university campus "freedom of expression" could properly be subordinated to other interests such as, for example, the conventions of decency in the use of display of language and pictures.

Despite the University's contention that it had met its "heavy burden" by providing full due process, the Supreme Court reversed, relying almost exclusively on Healy v. James. The Court stated:

We think Healy makes it clear that the mere (sic) dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency' . . . . There is language in the opinion below which suggests that the University's action here could be viewed as an exercise of its legitimate authority to enforce reasonable regulations

as to the time, place, and manner of speech and its dissemination. While we have repeatedly approved such regulatory authority (e.g., Healy v. James, 408 U.S. (1962-1963)), the facts set forth below show clearly that petitioner was dismissed because of the disapproved content of the newspaper, rather than the time, place or manner of its distribution.

#### 4. LIBEL

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### II-F. Tort Liability of a University for Libelous Material in Student Publications

#### I. INTRODUCTION

In 1819, Chief Justice John Marshall described an American system of higher education that was predominantly private and elitist in nature.<sup>1</sup> For nearly a century and a half thereafter, the courts had no place on campus. A student traded his constitutional rights for the privilege of a college education,<sup>2</sup> and colleges enforced their own system of norms and values.<sup>3</sup> Courts of the day referred to the student-

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101. See note 25 *supra*.

1. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 640-49 (1819). But see O'Neill, *Private Universities and Public Law*, 19 BUFFALO L. REV. 155, 156-58, 171 (1970) for the suggestion that Marshall's description of higher education was inaccurate at the time and is even more inaccurate today.

2. See *Tanton v. McKenney*, 226 Mich. 245, 253, 197 N.W. 510, 513 (1924) (female students airing grievance in the public press sufficient grounds for dismissal). Cf. *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 29 N.E. 517 (1892).

3. See *Board of Trustees v. Waugh*, 105 Miss. 623, 633-34, 62 S. 827, 830-31 (1914), *affd.* 237 U.S. 589 (1915) (entrance to a state university conditioned upon pledge not to

Source: 71 Michigan Law Review 1061 (1973)

university relationship in terms of contract<sup>4</sup> and *in loco parentis*.<sup>5</sup> Higher education existed in its own separate world, where the Constitution was discussed but rarely applied.

The relationship of the law to the college campus has changed drastically in the past fifteen years. The rising student militancy of the 1960's, commonly known as the students' rights movement,<sup>6</sup> and the willingness of the courts to enforce student rights<sup>7</sup> have restructured the relationship between the university and its students. Constitutional rights are no longer waived by college enrollment.<sup>8</sup> Similarly, contract theory and *in loco parentis* have either fallen into disuse or have been repudiated.<sup>9</sup>

One outgrowth of court enforcement of student constitutional rights has been a series of cases limiting the right of a university to censor student newspapers.<sup>10</sup> Freed from the shackles of the university's editorial control, student writers may now speak with a frankness unheard of on campus even ten years ago; but these decisions have produced an unprecedented situation for university administrators. On the one hand, outspoken student newspapers have created a

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join fraternities); *Anthony v. Syracuse Univ.*, 224 App. Div. 487, 231 N.Y.S. 435 (1928) (female student dismissed for not being "a typical Syracuse girl"). See generally *Developments in the Law—Academic Freedom*, 81 HARV. L. REV. 1045, 1135-37 (1968) [hereinafter *Developments*].

4. The use of contract theory in the college setting is exemplified by *State v. White*, 82 Ind. 278, 286 (1882), where the court noted: "Every student, upon his admission into an institution of learning, impliedly promises to submit to . . . all the necessary and proper rules and regulations which have been, or may thereafter be, adopted [by the institution] . . ."

5. See *Gott v. Berea College*, 156 Ky. 376, 379, 161 S.W. 204, 206 (1913). See generally *Niewiadomski v. United States*, 159 F.2d 683, 686 (6th Cir. 1947). *In loco parentis* refers to the idea that a college takes the place of the parent and assumes some of the parental duties.

6. For the history and perspectives of the movement, see *Students Protest*, 395 ANNALES, May 1971, at 1-194.

7. See, e.g., *Healy v. James*, 408 U.S. 169 (1972); *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1968). See also Schwartz, *The Student, the University, and the First Amendment*, 31 OHIO ST. L.J. 635 (1970); Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. FLA. L. REV. 290 (1968); *Project—Procedural Due Process and Campus Disorder*, 1970 DUKE L.J. 763; *Developments*, *supra* note 3, at 1128-43.

8. *Dickey v. Alabama State Bd. of Educ.*, 273 F. Supp. 613 (M.D. Ala. 1967), *dismissed as moot sub nom. Troy State Univ. v. Dickey*, 402 F.2d 515 (5th Cir. 1968). See also *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 n.2 (1969).

9. See *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961); *Knight v. State Bd. of Educ.*, 200 F. Supp. 174 (M.D. Tenn. 1961); *Goldberg v. Regents of Univ. of Cal.*, 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967).

10. See notes 102-06 *infra* and accompanying text. The term "student newspaper" as used throughout this Note refers to those newspapers which are official student organizations of a university. It is assumed that the newspaper has met the prescribed requirements for achieving that status. The term therefore does not include "underground newspapers" which, though they may be published by students and distributed on campus, have no formal ties to the university.

serious potential for libelous and other irresponsible publications.<sup>11</sup> Often large<sup>12</sup> and influential,<sup>13</sup> these newspapers can damage careers and reputations. On the other hand, the newspaper, and the students connected with it, may be incapable of compensating for the damaged reputations of those defamed. The student author and editors responsible for the defamation may be judgment proof. The newspaper itself may be an unincorporated association not subject to suit;<sup>14</sup> even when suable, it may have few assets. Therefore, the university becomes a prime target for the defamed plaintiff.

Although several articles have suggested that the university may be liable for the defamatory torts of a student newspaper,<sup>15</sup> no reported case so holding has been found. In fact, *Langford v. Vanderbilt University*<sup>16</sup> stood for thirteen years as the only reported case of a university being sued for libel in a student publication. In that case, the university argued that "it was not liable under the rule of *respondeat superior*, because the publication was not made by it or by any servant or agent for it."<sup>17</sup> The court, however, did not reach this issue, holding that the publication was privileged.<sup>18</sup> Recently, *Scelfo v. Rutgers University*<sup>19</sup> raised the same issue concerning the relationship of the university to its student newspaper. But again the court was not forced to reach squarely the issue of the university's liability, since it held that the publication was not defamatory and, alternatively, was privileged under the doctrine of *New York Times Co. v. Sullivan*.<sup>20</sup> This lack of precedent belies the significance of the problem. An informal survey of twenty-six college and university attorneys

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11. For example, Wayne State University's student newspaper, *The South End*, recently published an allegedly anti-Semitic series of articles which caused a furor within the Detroit-area Jewish community. *Detroit Free Press*, Jan. 31, 1973, at 14-A, col. 1.

12. An informal survey of student newspapers conducted by the *Review* disclosed that the 26 student newspapers which responded had annual budgets totaling 3.6 million dollars. See Appendix *infra*. See also Hudgins, *Academic Freedom and the Student Press*, 6 WAKE FOREST INTRA. L. REV. 40, 41 (1969).

13. For example, one campus commentator believes that the Michigan Daily is the most powerful student political force on The University of Michigan campus. *Michigan Daily*, April 16, 1969, at 4, col. 7. See also Abbott, *The Student Press: Some First Impressions*, 16 WAYNE L. REV. 1, 6-9 (1969).

14. See *Marshall v. Longshoremen Local 6*, 57 Cal. 2d 781, 371 P.2d 987, 22 Cal. Rptr. 211 (1962), for a brief survey of the case law on the liability of unincorporated associations.

15. Abbott, *supra* note 13, at 13-14; Fishbein, *The University's Right of Control over Student Publications*, 5 COLLEGE COUNSEL 65 (1970); Trammell, *Student Publications and Other Sources of Libel Within the University*, in 3 ANNUAL CONFERENCE OF THE NATL. ASSN. OF COLLEGE AND UNIV. ATTORNEYS 7 (1963).

16. 44 Tenn. App. 694, 318 S.W.2d 568 (1958).

17. 44 Tenn. App. at 699, 318 S.W.2d at 571.

18. 44 Tenn. App. at 710-11, 318 S.W.2d at 576.

19. 116 N.J. Super. 403, 282 A.2d 445 (1971).

20. 376 U.S. 254 (1964).



conducted by the *Review* uncovered seven unreported suits against universities for libelous material in student publications.<sup>21</sup>

The implications of the past decade's expansion of first amendment rights are somewhat paradoxical. This expansion has created a threat of a greater potential of defamation in student newspapers. At the same time, a concurrent expansion of the protection afforded the press for defamatory publications has reduced the likelihood of a successful suit.

In *New York Times Co. v. Sullivan*,<sup>22</sup> the Court held that a public official could not recover damages for defamatory falsehood relating to his official conduct without proving "actual malice," which the Court defined as knowledge of the falsity or reckless disregard of the truth. In later cases the Court broadened the coverage of the *New York Times* privilege by first expanding the definition of public officials<sup>23</sup> and later extending the doctrine to public figures acting in matters of public interest.<sup>24</sup> Furthermore, the Court narrowed the scope of "actual malice" by defining reckless disregard of the truth to mean false statements made with a high degree of awareness of their probable falsity.<sup>25</sup> This definition was further limited to include only those statements about which the speaker entertained serious doubts when made.<sup>26</sup>

Most recently, in *Rosenbloom v. Metromedia, Inc.*,<sup>27</sup> the Court focused on the character of the reported event rather than of the individual involved. Four members of the Court agreed that the "actual malice" standard was applicable to a private individual's claim if the alleged defamatory matter was of general public concern.<sup>28</sup> The fifth member of the majority limited his concurrence to reports concerning the actions of public officials with which private individuals are connected.<sup>29</sup> Three dissenting Justices in *Rosenbloom* expressed a willingness to re-examine the scope of the *New York Times* doctrine itself and, at least where a private individual is con-

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21. Two universities provided citations. *La Barge v. Daily Orange*, Civil No. 70-6597 (N.Y. Sup. Ct., 5th Dist., April 8, 1972) (dismissed for failure to prosecute); *Bruex v. Snyder*, Civil No. 724207H, (Mich. Cir. Ct., Kalamazoo County, filed November 2, 1972) (This action against the Western Michigan University Herald was active as of Jan. 1, 1973.).

22. 376 U.S. at 279-80.

23. *Rosenblatt v. Baer*, 383 U.S. 75, 81 (1966).

24. *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).

25. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

26. *St. Amant v. Thompson*, 390 U.S. 727 (1968).

27. 403 U.S. 29 (1971).

28. This position was expressed by Justice Brennan in an opinion with which Chief Justice Burger and Justice Blackmun concurred. Justice Black concurred separately, reiterating his belief that "the First Amendment does not permit the recovery of libel judgments against the news media even when statements are broadcast with knowledge they are false." 403 U.S. at 57.

29. 403 U.S. at 62 (White, J., concurring).

cerned, permit recovery upon proof of negligence and actual damage while eliminating or restricting the possibility of punitive damages.<sup>30</sup> Clearly, the *New York Times* doctrine stands as a significant barrier to the imposition of liability for defamation. Given the division among the Justices in *Rosenbloom* and the recent addition to the Court of two new Justices since that decision, however, the precise relationship between the first amendment and state defamation law may be in a state of flux.<sup>31</sup>

While attention will occasionally be drawn to the impact of the *New York Times* privilege, this Note largely assumes that a defamed plaintiff is capable of overcoming the constitutional barriers imposed by *New York Times* and its progeny. In other words, the assumption is made that libelous statements either fall outside the constitutional privilege or that the plaintiff can demonstrate actual malice in the student authors or editors.<sup>32</sup> The Note will analyze the traditional theories which may be invoked to establish the university's liability for defamatory material in student publications.<sup>33</sup> First, a range of student newspaper-university relationships will be examined with respect to vicarious liability. As will be seen, this issue is complicated by possible first amendment limitations on a public university's right to control its student publications for libel. Second, an alternative theory of personal, rather than vicarious, liability will be considered. In conclusion, several methods will be suggested through which a university might minimize its potential liability for libel in its student publications.

30. In dissenting opinions both Justice Harlan and Justice Marshall, with whom Justice Stewart concurred, agreed that proof of actual damages and some degree of negligence was the appropriate standard. 403 U.S. at 66, 68-69, 86-87. The dissenting opinions differed on the question of punitive damages, however. Justice Harlan would allow punitive damages where they "bear a reasonable and purposeful relationship to the actual harm done . . . and the plaintiff has proved the speaker acted out of express malice . . ." 403 U.S. at 77. Justice Marshall would eliminate the recovery of punitive damages entirely in defamation suits against the press. 403 U.S. at 83-86.

31. For a thoughtful discussion of *Rosenbloom* and the developments in this area, see Comment, *The Expanding Constitutional Protection for the News Media from Liability for Defamation: Predictability and the New Synthesis*, 70 MICH. L. REV. 1547 (1972). See generally T. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 518-44 (1970); Kalven, *The Reasonable Man and the First Amendment: Hill, Butts, and Walker*, 1967 SUP. CT. REV. 267; Kalven, *The New York Times Case: A Note on the "Central Meaning of the First Amendment,"* 1964 SUP. CT. REV. 191; Wright, *Defamation, Privacy and the Public's Right To Know: A National Problem and a New Approach*, 46 TEXAS L. REV. 630 (1968).

32. This Note assumes that the plaintiff can overcome the doctrines of charitable and sovereign immunity. See generally W. PROSSER, *LAW OF TORTS* §§ 131, 133 (4th ed. 1971); Annot., 38 A.L.R.3d 480 (1971). The relative importance of the immunity problem is declining inasmuch as the trend is toward the elimination of these doctrines. See W. PROSSER, *supra*, § 133; Van Alstyne, *Governmental Tort Liability: A Decade of Change*, 1966 U. ILL. L.F. 919.

33. While this Note specifically examines defamatory material in student newspapers, the general concepts should be applicable to other university-sponsored student publications.

## II. THEORIES OF LIABILITY

By the beginning of this century it was generally recognized that a publisher would be held strictly liable for defamatory matter appearing in his newspaper,<sup>34</sup> even when inserted without his knowledge<sup>35</sup> or against his instructions.<sup>36</sup> Liability was imposed not only when the publisher or owner was an individual actively engaged in the business, but also when the newspaper was a corporation.<sup>37</sup> But these decisions all dealt with commercial, not student, newspapers. It is therefore necessary to determine whether the various theories of liability used to reach a commercial publisher are sufficient to sustain an action against a university for libelous matter printed in a student publication. Two theories, which will be referred to as vicarious liability and communication liability, will be considered.

### A. Vicarious Liability

Vicarious liability—also known as *respondeat superior*, imputed liability, and enterprise liability—is a doctrine which imposes responsibility upon one person or entity for the torts of another because of the relationship between them.<sup>38</sup> While the origins of the doctrine are obscure and its rationale has been much debated,<sup>39</sup> vicarious liability is generally justified today by the enterprise concept.<sup>40</sup> This justification, however, does not identify precisely when vicarious liability will be imposed.<sup>41</sup>

34. *Taylor v. Hearst*, 107 Cal. 262, 40 P. 392 (1895); *Smith v. Utley*, 92 Wis. 133, 65 N.W. 744 (1896).

35. *Buckley v. Knapp*, 48 Mo. 152 (1871); *Crane v. Bennet*, 177 N.Y. 106, 69 N.E. 274 (1904).

36. *Dunn v. Hall*, 1 Ind. 344 (1849); *Perret v. New Orleans Times*, 25 La. Ann. 170, 173 (1873) (dictum). See Annot., 15 Am. St. R. 333 (1890).

37. See, e.g., *Sweet v. Post Publishing Co.*, 215 Mass. 450, 102 N.E. 660 (1915); *Park v. Detroit Free Press Co.*, 72 Mich. 560, 40 N.W. 731 (1888); *Turton v. New York Recorder Co.*, 144 N.Y. 144 (1894); *World Publishing Co. v. Minahan*, 70 Okla. 107, 173 P. 815 (1913); *Coffman v. Spokane Chronicle Publishing Co.*, 65 Wash. 1, 117 P. 596 (1911).

38. 2 F. HARPER & F. JAMES, *THE LAW OF TORTS* § 26.1 (1956); W. PROSSER, *supra* note 32, § 69.

39. See generally T. BATY, *VICARIOUS LIABILITY* (1916); Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L.J. 499 (1961); Holmes, *Agency*, 4 HARV. L. REV. 345 (1891); Smith, *Frolic and Detour*, 23 COLUM. L. REV. 444 (1923); Wigmore, *Responsibility for Tortious Acts: Its History* (pt. 2), 7 HARV. L. REV. 333 (1894).

40. An enterprise is conceived as being endowed with three characteristics which make it a preferable loss bearer for torts caused by its employees. First, the enterprise is thought to be in the best position to foresee the risks created by its activity. Therefore, it is in the best position to minimize them. Douglas, *Vicarious Liability and Administration of Risk*, 38 YALE L.J. 584, 586-87 (1929). Second, by definition the enterprise deals in a market. Therefore, it can spread the burden of any losses among a mass audience. Calabresi, *supra* note 39, at 517-19. Finally, it can reflect the loss as a cost of doing business, thereby facilitating a rational allocation of resources. *Id.* at 500-02.

41. See Douglas, *supra* note 40, for a thoughtful analysis which has not yet been adopted in the case law.

One common test states that vicarious liability will be imposed upon (1) a principal for the torts of his agents, if, (2) the agent was acting within the scope of his actual or apparent authority.<sup>42</sup> This test provides a satisfactory framework for analyzing the student newspaper-university relationship.

### 1. The "Authority" Requirement

To facilitate analysis the authority requirement will be examined first. Assuming, for the moment, that an agency relationship exists between the university, as principal, and its student newspaper, as agent, the problem is to determine the range of defamatory torts that are within the scope of the student authors' and editors' authority. Only in regard to these torts will the university be held liable.

Several types of authority are commonly recognized. Authority vested in the agent by the principal is actual authority.<sup>43</sup> It may be established by the principal's express instructions to the agent,<sup>44</sup> or may be implied from the principal's instructions concerning the nature of the business undertaken, the time allotted to perform it, and custom or trade practice.<sup>45</sup> In some cases, no actual authority is vested in the agent by the principal; only the appearance of authority is created through the principal's representations to others which suggest an agent has authority.<sup>46</sup> In these cases, the courts may vest authority in the agent to protect an innocent person.<sup>47</sup>

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Section 220(2) of the RESTATEMENT (SECOND) OF AGENCY (1957), which lists ten factors which courts have often considered in imposing vicarious liability, reflects the disarray of the case law. The factors are unweighted and their relevance is not explained.

42. See, e.g., *Providence-Washington Ins. Co. v. Owens*, 207 S.W. 666 (1918); *Ferson, Agency To Make Representations*, 2 VAND. L. REV. 1, 9-10 (1948). While this descriptive test often appears in the case law, the majority of courts use the terms "master," "servant," and "employment" in place of "principal," "agent," and "authority," as does the tort section (§§ 215-67) of the RESTATEMENT, *supra* note 41. This Note will use "principal" and "agent" rather than "master" and "servant" since the terminology is virtually synonymous. R. POWELL, *THE LAW OF AGENCY* 22-23 (2d ed. 1961).

43. RESTATEMENT, *supra* note 41, § 7.

44. *Id.* See also R. POWELL, *supra* note 42, at 38-46.

45. RESTATEMENT, *supra* note 41, § 7. See also R. POWELL, *supra* note 42, at 38-46.

46. RESTATEMENT, *supra* note 41, § 8. See also R. POWELL, *supra* note 42, at 56-68; RESTATEMENT, *supra*, § 8-B.

47. RESTATEMENT, *supra* note 41, § 265. See also Hetherington, *Trends in Enterprise Liability: Law and the Unauthorized Agent*, 19 STAN. L. REV. 76 (1966); Comment, *Agency—Recovery in Tort Under the Theory of Apparent Authority or Agency by Estoppel*, 69 W. VA. L. REV. 186 (1967).

The difference between actual and apparent authority is derived from the flow of the principal's representations. In actual authority the flow is from principal to agent, while in apparent authority the flow is from the principal to the third party.

In addition to actual and apparent authority, some commentators have concluded that there is another basis upon which authority can rest, sometimes called usual authority or inherent agency. However, this basis of liability appears to be a blend of apparent and implied authority, most often found when the principal has seemingly created authority in an agent by appointing him to a position recognized in the com-

Three examples illustrate the application of these principles in the student newspaper-university context. The first example is that of a student reporter who, in good faith, has inaccurately reported a story, thereby libeling an innocent person.<sup>48</sup> The reporter has engaged in conduct required by his agency and also has followed the express guidelines of the newspaper by attempting to check the facts for accuracy. No one could dispute that the inaccurate story was within the reporter's actual authority.

The second example is that of a student reporter who has written a story using inaccurate, unverified data while rushing to meet a deadline.<sup>49</sup> The reporter has violated the student newspaper rules concerning verification, but was motivated by the need to give the principal the benefit of the story. It is submitted that the reporter was impliedly authorized to violate the rules since the principal should anticipate that the reporter would not refrain from acts that appear natural under the circumstances.<sup>50</sup>

In each example above, liability would not likely be imposed upon the author, the editors, the student newspaper, or the university if the statements fell within the ambit of *New York Times*.<sup>51</sup> Clearly, there is no actual malice in the first case. Nor is malice likely in the second example; the Court has indicated that the failure to verify all the facts in a "hot news" item should not be considered malice.<sup>52</sup>

The third example, that of a libelous story written by a reporter or editor out of personal malice, presents no problem under the *New York Times* doctrine, but raises a more difficult problem in terms of the agency analysis. While the reporter has no actual authority, the principal should be liable for the defamation because the objective facts create an appearance that the story was within the writer's authority.<sup>53</sup> To the statements of the reporter are added the weight

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munity as carrying certain powers to bind his principal, and thus does not merit separate discussion. See R. POWELL, *supra* note 42, at 41-53; RESTATEMENT, *supra*, § 8-A.

48. See text accompanying notes 22-30 *supra*.

49. See text accompanying note 26 *supra*.

50. See *Aetna Life Ins. Co. v. Mutual Benefit Health & Accident Assn.*, 82 F.2d 115, 120 (8th Cir. 1936); *Di Giorgio Fruit Corp. v. AFL-CIO*, 215 Cal. App. 2d 560, 575-76, 30 Cal. Rptr. 350, 359 (1963); *Mercado v. Hoefler*, 190 Cal. App. 2d 12, 11 Cal. Rptr. 787, 790 (1961).

"A master cannot direct a servant to accomplish a result and anticipate that he will always use the means which he (the master) directs or will refrain from acts which it is natural to expect that servants may do." RESTATEMENT, *supra* note 41, § 230, Comment b.

51. See notes 22-30 *supra* and accompanying text.

52. *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 153-54, 158-59 (1967).

53. See *Atlanta Journal Co. v. Doyal*, 82 Ga. App. 321, 60 S.E.2d 802 (1950), where a reporter intentionally and falsely reported that a local official had been charged with criminal conduct by a witness in a case. The official sued the newspaper, which defended by arguing that it was not liable for the story because the reporter's personal vendetta was outside the scope of his authority. The court rejected this argument, concluding that the newspaper appeared to vest the reporter with authority, even though he actually did not have it.

of the reputation of the student newspaper and, further, the university itself.<sup>54</sup>

These examples illustrate the spectrum of possible defamatory situations. At one end is the unavoidable mistake, at the other, the intentional libel. The conclusion can be drawn that every libelous article written by an agent for publication in the newspaper falls within the scope of the agent's actual or apparent authority. At this point the earlier assumption of an agency between the student newspaper and the university must be considered.

## 2. *The Agency Requirement*

a. *The traditional test for agency.* If vicarious liability is to be imposed upon the university for libel in student newspapers, an agency relationship must be established. Agency is defined as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."<sup>55</sup> This definition implies a three pronged test: consent, benefit, and the right of control.

Consent is measured by an objective standard.<sup>56</sup> When a newspaper has official status as a student organization, it seems clear that a consensual relationship with the university exists. Even when a student newspaper does not have such official status, the university and the newspaper may manifest consent informally through conduct.<sup>57</sup> At least where the university in fact exercises some form of control over the paper, it should be held that a consensual relationship exists.

The benefit requirement arises from the notion that the agent acts on behalf of the principal.<sup>58</sup> Since agency is usually associated with business carried on for profit, the principal typically expects to benefit financially by entering into the relationship.<sup>59</sup> Far less tangible benefits, however, are sufficient to support an agency relationship. Domestic servants<sup>60</sup> or gratuitous helpers<sup>61</sup> usually provide benefits of a nonfinancial character, yet their actions may give rise to vicarious liability.

54. RESTATEMENT, *supra* note 41, § 247, Comment c. See also *id.* §§ 165, 254, 265.

55. RESTATEMENT, *supra* note 41, § 1.

56. *Id.* § 1, Comment b.

57. See, e.g., *Malloy v. Fong*, 37 Cal. 2d 356, 232 P.2d 241 (1951); *Heims v. Hanke*, 5 Wis. 2d 465, 93 N.W.2d 455 (1958). See also RESTATEMENT, *supra* note 41, §§ 1, 15.

58. See *Mitchell v. Resto*, 157 Conn. 258, 253 A.2d 25 (1968); *Weatherman v. Ramsey*, 207 N.C. 270, 176 S.E. 568 (1934). See also RESTATEMENT, *supra* note 41, §§ 1, 14, 14A-M.

59. Cf. R. POWELL, *supra* note 42, at 1-4.

60. See RESTATEMENT, *supra* note 41, § 1, Comments d, e, § 220, Comments a, c.

61. See *Malloy v. Fong*, 37 Cal. 2d 356, 232 P.2d 241 (1951); *Heims v. Hanke*, 5 Wis. 2d 465, 93 N.W.2d 455 (1958).

A university could conceivably derive three types of benefits from a student newspaper: financial, educational, and informational. But the likelihood of obtaining financial benefits is small. Most student newspapers are not profit-making enterprises and the university must provide funds for their operation.<sup>62</sup> Of more practical importance are the educational benefits that the university receives by publishing a student newspaper. These benefits are obvious when the newspaper is used as a teaching device integrated into the curriculum, but also arise from extracurricular student newspapers. Even where the newspaper is hostile to the administration, a university receives a benefit through the development of students who can think perceptively and critically. A newspaper that serves as a forum for debate and discussion facilitates an atmosphere of intellectual freedom and enhances the vitality of the university community. Finally, a student newspaper benefits the university by disseminating information of particular concern to the university community.

While a finding of benefit is necessary to establish the agency requirement, it is not sufficient. Other relationships, such as buyer-seller or stockholder-corporation, can be characterized to include benefits similar to those created through an agency.<sup>63</sup> Therefore, courts also require the presence of the control element. Early formulations of this requirement centered around the principal's actual control over the agent's physical movements, even though a principal who employed more than one agent could not always be in physical control of each agent's conduct.<sup>64</sup> The leading case of *Singer Manufacturing Co. v. Rahn*<sup>65</sup> changed the emphasis from the principal's actual control to his "right to direct the manner in which the business shall be done as well as the result to be accomplished."<sup>66</sup> But that case still clung to the concept that the principal must be able to direct the agent's physical conduct. This concept proved inadequate since principals often employ agents with special skills lacked by the principal. A test that did not require control over the details of physical conduct was needed. The concept of "enterprise control" has answered that need: some courts and commentators have viewed control in terms of the right to make management and policy decisions.<sup>67</sup>

62. Over seventy-five per cent of the student newspapers responding to an informal survey by the *Review* reported receiving a subsidy from the sponsoring university, either in the form of activity fees or through general revenues. See Appendix *infra*.

63. See RESTATEMENT, *supra* note 41, §§ 14A-M.

64. See Kahn-Freund, *Servants and Independent Contractors*, 14 MODERN L. REV. 504 (1951). Cf. R. POWELL, *supra* note 42, at 16-19.

65. 132 U.S. 518 (1889).

66. 132 U.S. at 523.

67. See, e.g., *Bing v. Thunig*, 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957); Douglas, *supra* note 40, at 586-87. Cf. *Peterson v. Brinn & Jensen Co.*, 134 Neb. 909, 280 N.W. 171 (1938); R. POWELL, *supra* note 42, at 16-19; Kahn-Freund, *supra* note 64, at 506-07.



Under this view, a principal has control over an agent whenever the former can direct the latter to employ his skills to accomplish a certain result; the principal is not required to direct the agent in the details of his task.

Two control mechanisms are likely to be present in this situation. The first is the university's power over the student newspaper's finances. Universities have typically supported student newspapers by providing revenue and donating such items as office space, equipment, supplies and a substantial range of services from budget planning to duplication.<sup>68</sup> In return for providing financial support a university will frequently require the student newspaper to submit all its contracts to the university for approval.<sup>69</sup> Thus, the university, through its financial power, has established control over the student newspaper,<sup>70</sup> since it cannot function without the university's approval.

Another important, but less obvious, means of establishing control over the student newspaper is through the university's inherent power to operate or regulate activities associated with it.<sup>71</sup> A student newspaper can be differentiated from any other distributed on campus—from the *New York Times* to an underground newspaper—when it has the status of an official student organization.<sup>72</sup> In this situation, the university could promulgate regulations, enforceable under threat of termination of the official status of the student newspaper, imposing its own conceptions of managerial and, in some instances, editorial policy.<sup>73</sup>

Even an unexercised power should be sufficient to establish the university's right of control. In *Rubtchinsky v. State University of*

68. Over ninety per cent of the student newspapers answering the *Review* survey reported that they received some support of this type from the university. See Appendix *infra*.

69. See, e.g., Purdue Exponent Review Board Report, App. VI-B, at 5 (1969). Although university attorneys who participated in the *Review* survey were not specifically asked about retention of contract approval power, over one half indicated that the university retained this type of power. See Appendix *infra*.

70. See Purdue Review Board, *supra* note 69, App. VI-B, at 5-9.

71. See *Healy v. James*, 408 U.S. 169, 192 (1972), quoting *Esteban v. Central Missouri State College*, 415 F.2d 1077, 1089 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970): "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has inherent power properly to discipline; that it has power appropriately to protect itself and its property, that it may expect that its students adhere to generally accepted standards of conduct." In his concurring opinion in *Healy* Chief Justice Burger noted:

I read the basis of the remand as recognizing that student organizations seeking the privilege of official campus recognition must be willing to abide by valid rules of the institution applicable to all such organizations. This is a reasonable condition insofar as it calls for the disavowal of resort to force, disruption, and interference with the rights of others.

408 U.S. at 195. See generally Goldstein, *The Scope and Sources of School Board Authority To Regulate Student Conduct and Status: A Non-Constitutional Analysis*, 117 U. PA. L. REV. 373 (1969).

72. See note 10 *supra*.

73. See note 71 *supra*.

New York<sup>74</sup> a suit was filed against the university by the parents of an eighteen-year-old student injured while participating in an activity sponsored by the Campus Student Association. The university argued that the Student Association had planned the whole activity and operated as "a separate and distinct entity . . . from the college."<sup>75</sup> Noting, however, that under the constitution of the Student Association the president of the university had full veto power over the activity, the court found the university in sufficient control of the activity to justify the imposition of liability.<sup>76</sup> The relationship between the Student Association and the University was found to be "consonant with the effort to grant college students as much autonomy as possible in their extracurricular activities while still retaining final control in the hands of adult authority."<sup>77</sup> The retention of ultimate control, whether exercised or not, was sufficient for vicarious liability purposes.<sup>78</sup>

The relationship between the university and its student newspaper varies greatly from school to school; thus, the significance of the forms of control discussed above can be more fully understood when viewed in the context of specific fact situations. Because the vast majority of student newspapers are unincorporated associations,<sup>79</sup> their variations will be set forth first, through the use of four models that illustrate a range of student newspaper-university relationships. Then, the special significance of independent incorporation will be examined.

Model A typifies unincorporated student newspapers that are operated by the university as part of the curriculum. The newspaper is operated by the journalism department as a training device for journalism students and there is supervision by faculty members who read and pass upon the acceptability of articles. The university also provides the newspaper with operating revenue, facilities, supplies, and services. In addition, the university retains the power to approve all newspaper contracts. In short, the university exercises virtually complete control over the student newspaper.

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74. 46 Misc. 2d 679, 260 N.Y.S.2d 256 (Ct. Cl. 1965).

75. 46 Misc. 2d at 681, 260 N.Y.S.2d at 258.

76. However, since the court also found that the university had not violated any duty owed to the student, liability was not imposed.

77. 46 Misc. 2d at 681, 260 N.Y.S.2d at 259.

78. The legal advisors of a student-faculty committee appointed to examine the relationship between Purdue University and its student newspaper and to recommend changes concluded that the university had control over the publication even though the constitution of the newspaper purported to keep editorial authority solely in the student editor. They based this conclusion on the university's inherent power over student organizations:

Since the constitution [of the student newspaper] was conditional upon approval of the University and since the University reserves the right to revise it, the constitution itself is an indication the ultimate power rests with the University, although it has seen fit to delegate terminable editorial authority to the student organization. Purdue Review Board, *supra* note 69, App. VI-B, at 13. See also *id.* at 2-17.

79. See Appendix *infra*.

In model *B* the university dominates the unincorporated newspaper's financial structure and has retained contract-approval power in return for its financial aid.<sup>80</sup> But in this model the student editors have complete editorial freedom, and the university disclaims any intent to control editorial policy. Nevertheless, the contract-approval power gives the university the *right* of control. Moreover, the university may also have such a right through its inherent power if the newspaper is an official student organization. The essential difference between this model and model *A* is in the amount of discretion given to students. Yet, the greater discretion given to the students in model *B* could be withdrawn at any time. The right of control exists even though the university disclaims it.<sup>81</sup>

Model *C* presents a more difficult situation for concluding that the university controls the unincorporated student newspaper. In this model the university does not provide the newspaper with any financial support or technical assistance. Moreover, the university does not exercise any actual managerial or editorial control, nor even approve the newspaper's contracts. The only significant contact between the university and the student newspaper is the paper's status as an official student organization. However, even this sole contact may be sufficient to establish the university's control. The student newspaper's official status should give the university the inherent power to make and enforce regulations dictating managerial and editorial policies.

Model *D* assumes the same facts as model *C* except that the newspaper is not an official student organization. In this case there is no ground for concluding that the control requirement is met.

These models illustrate the range of student newspaper-university relationships, from virtual identity to no contacts at all. In each case, except for model *D*, a court could conclude that vicarious liability should be imposed. The benefits necessary to establish the university as a principal consist of the various educational and informational benefits that the university derives.<sup>82</sup> Control sufficient to meet either the *Singer* test<sup>83</sup> or the enterprise test<sup>84</sup> is also present. In each of the first three models the university, through the use of the financial or inherent power mechanisms, could either completely direct the details of the editors' and staff's employment or, alternatively, take over the policy-making function. Thus, the fulfillment of both the agency requirement and the authority requirement, discussed

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80. Over one half of the university attorneys answering the *Review* survey reported that their university's relationship to the student newspaper was similar to the one described by this model. See Appendix *infra*.

81. See text accompanying notes 65-67 *supra*.

82. See text accompanying notes 61-63 *supra*.

83. See text accompanying notes 65-66 *supra*.

84. See notes 67 *supra* and accompanying text.

above,<sup>85</sup> together suggest that universities generally should expect to be held vicariously liable for defamatory material in unincorporated student publications.

However, when a student newspaper is independently incorporated a significant new element is added to the calculus of values that bear on the vicarious liability problem. Given that incorporation is viewed generally as a means of limiting liability, does the independent incorporation of a student newspaper obstruct the imposition of vicarious liability upon the university?

When the American Association of University Professors published its Joint Statement on Rights and Freedoms of Students<sup>86</sup> it stated: "The student press should be free from censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage."<sup>87</sup> The Joint Statement concluded that the best means of achieving this objective would be through "an independent corporation financially and legally separate from the university."<sup>88</sup> In addition to the concern for promoting editorial freedom, another reason for separate incorporation was that "[w]here financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications." The clear inference from this statement is that if the newspaper is legally and financially autonomous the university will be insulated from liability. However, even where a student newspaper is separately incorporated financial independence is not likely to be achieved.<sup>89</sup> Large independently incorporated student newspapers may enjoy the luxury of university aid<sup>90</sup> and depend upon its existence.<sup>91</sup> The possibility of incorporation coexisting with some form of dependence raises several questions. If a newspaper is legally separate but financially dependent upon the university, will a court ignore the legal barrier and hold the university vicariously liable? In the absence of financial dependence, would an independent corporation that was an official student organization provide a sufficient basis for imposing vicarious liability on the grounds suggested above, that the university has an inherent power over its student activities?

It is suggested that when consent and benefit are present, control

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85. See notes 43-54 *supra* and accompanying text.

86. 54 A.A.U.P. BULL. 258 (1968).

87. *Id.* at 260.

88. *Id.*

89. See Appendix *infra*.

90. The University of Michigan purchases 1800 subscriptions for faculty and staff. Purdue Review Board, *supra* note 69, App. II-G.

91. Henry Grix, a 1969 Daily editor, noted in a letter to C. Michael Abbott that "[i]n fact the one threat the University can make is to make us totally independent; there is a good chance we would quickly go broke." Abbott, *supra* note 13, at 14 n.44.

should be analyzed in terms of the mechanisms set forth earlier, without regard to the actor's corporate status. Since the realities of control, rather than mere considerations of form, appear most important, the university should be liable whether or not the student newspaper is incorporated in situations equivalent to models A, B, and C above. However, the problem may not be merely one of form versus substance. The corporate form carries with it a privilege of limited liability, disregarded only in rare circumstances.<sup>92</sup> There is, indeed, authority that the traditional rules of agency will be relaxed when considering whether a subsidiary corporation is an agent of its parent.<sup>93</sup> Thus the fact of incorporation itself may militate against finding vicarious liability. Regardless of how the issue is determined in this context, there will often be consent, benefit, and control sufficient to justify the imposition of vicarious liability upon the university for defamation published in its student newspaper.

b. *Constitutional limitations upon a university's control of a student newspaper: vicarious liability reconsidered.* As evidenced by *New York Times* and its progeny, the first amendment plays a significant role in the synthesis of the substantive law of libel. But the first amendment may affect not only the determination of primary liability but also the ability of the university to control effectively the opera-

92. *United States v. Milwaukee Refrigerator Transit Co.*, 144 F. 247, 255 (C.C.E.D. Wis. 1905). However, a court might "pierce the corporate veil" where an incorporated student newspaper is involved, thereby either refusing to recognize the newspaper and university as separate entities or, to the extent that the newspaper is a principal shareholder, refusing to recognize the separation between the corporation and its shareholders. While a detailed analysis of this problem is beyond the scope of this Note, several observations can be made. The courts will pierce the corporate veil only when they perceive some fundamental unfairness in maintaining separation. See *Bartle v. Home Owners Cooperative, Inc.*, 309 N.Y. 103, 106, 127 N.E.2d 832, 833 (1955). Factors that are often cited include a disregard for the formalities of corporate existence, a commingling of affairs, or thin capitalization. See *Mull v. Colt Co.*, 31 F.R.D. 154 (S.D.N.Y. 1962); *Minton v. Cavancy*, 56 Cal. 2d 576, 364 P.2d 473, 15 Cal. Rptr. 641 (1961). But see *Waikovsky v. Carlton*, 18 N.Y.2d 414, 223 N.E.2d 6, 276 N.Y.S.2d 585 (1966). See generally *Hamilton, The Corporate Entity*, 49 TEXAS L. REV. 979, 994-98 (1971). However, because the case law arises in a commercial setting, any analogy to the university-student newspaper context must be drawn with caution.

Nevertheless, the university can minimize whatever risk of piercing exists by adopting several measures. First, the formalities of corporate separation should be rigorously adhered to in forming the student newspaper corporation and in carrying on its business. See *Douglas & Shanks, Insulation from Liability Through Subsidiary Corporations*, 39 YALE L.J. 193, 196-97 (1929); Note, *Should Shareholders Be Personally Liable for the Torts of Their Corporations?*, 76 YALE L.J. 1190, 1193-94 (1967).

Second, the student newspaper should be operated in a fair manner considering the risk of a libel action. For example, if the newspaper's assets are small, profits or operating funds should be allocated to the purchase of insurance before paying salaries to student editors and managers. Third, the separation of the newspaper and the university should be emphasized to the public by a disclaimer stating that the views of the newspaper are not necessarily those of the university. Further, a statement of purposes in the corporate charter should include separateness of editorial control, if appropriate.

93. F. POWELL, *PARENT AND SUBSIDIARY CORPORATIONS* 92-93 (1931). See *Berkey v. Third Ave. Ry.*, 204 N.Y. 84, 94-95, 156 N.E. 80, 61 (1926).

tion of a student newspaper. Where first amendment considerations are applicable, the question whether the university meets the control requirement for agency must be reconsidered. This section will examine the extent to which the first amendment limits the university's control over the publication of libel in student newspapers as well as the implications of these limitations on the imposition of vicarious liability.

Although one of the most significant types of control that the university could exercise over a student newspaper would be control over its editorial policy, recent judicial recognition of the first amendment rights of students suggests that there may be important constitutional limitations on the extent of such control. By the terms of both the first and fourteenth amendments, freedom of speech and the press are protected against interference from governmental or "state action."<sup>94</sup> There is certainly no difficulty in finding "state action" where a state university is concerned.<sup>95</sup> But whether state action can be found in the private university for first amendment purposes is a largely unanswered question. The various state action theories, which have developed in other contexts and for other purposes, might be applied to the private university for first amendment purposes.<sup>96</sup>

94. See generally P. KAUFER, *CIVIL LIBERTIES AND THE CONSTITUTION* 127-66 (1962); Black, *The Supreme Court 1966 Term, Foreword: "State Action," Equal Protection, and California's Proposition 13*, 81 HARV. L. REV. 69 (1967); Lewis, *The Meaning of State Action*, 60 COLUM. L. REV. 1458 (1960); Van Alstyne & Karst, *State Action*, 14 STAN. L. REV. 3 (1961).

95. See, e.g., *Healy v. James*, 408 U.S. 170 (1972); *Antonelli v. Hammond*, 308 F. Supp. 1329 (1970).

96. For an analysis of the potential presence of state action in the private university, see H. FRIENDLY, *THE DARTMOUTH COLLEGE CASE AND THE PUBLIC-PRIVATE PENUMBRA* (1969); O'Neill, *supra* note 1; Schubert, *State Action and the Private University*, 24 RUTGERS L. REV. 323 (1970); *Developments, supra* note 3, at 1154-63.

Recognizing that a clear private-public distinction is rarely present in our modern institutions and enterprises the Court has declared that a "sifting [of] facts and weighing [of] circumstances" is necessary to determine whether the state is "significantly involved" in what might appear to be private activity. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172-73 (1972). Thus, in determining whether sufficient state action is present in a private university, a court would consider the wide variety of factors that it has examined in previous cases including state financial assistance through direct grants, scholarships, and tax exemptions, the participation of state officials in the administration of the private university, the degree of state regulation of the university through accreditation, attendance, diploma or employment requirements, as well as the extent to which the private university performs a public function by providing educational opportunities which the state might otherwise have to supply. See, e.g., *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Evans v. Newton*, 382 U.S. 296 (1966); *Griffin v. County School Bd.*, 377 U.S. 218 (1964); *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Pennsylvania v. Board of Directors*, 353 U.S. 230 (1957), for the various criteria of state action. One district court found state action to be present in a major private university, based on a combination of the factors cited above, but the holding was reversed at a new trial. *Guillery v. Administrators of Tulane Univ.*, 203 F. Supp. 855 (E.D. La.), *vacated*, 207 F. Supp. 554, *aff'd. & remanded per curiam*, 306 F.2d 489 (5th Cir.), *rev'd. on retrial*, 212 F. Supp. 674 (E.D. La. 1962). It is unlikely that any one of these factors by itself would be sufficient; rather a combination of all of the factors, each heavily weighted toward state control, would probably be necessary in order to support a find-

But given our society's traditional respect for the independence of the private university,<sup>97</sup> it is unlikely that the courts would be inclined to find "state action" in this situation. The constitutional limitations on editorial control are probably applicable only to state universities.

An examination of these limitations should begin with *Tinker v. Des Moines Independent Community School District*<sup>98</sup> in which the Supreme Court held that the first amendment prohibited a high school from disciplining students for wearing black arm bands as a protest against the Vietnam War. The Court declared that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>99</sup> However, restrictions could be imposed upon a student's freedom of expression if "necessary to avoid material and substantial interference with schoolwork or discipline . . . ."<sup>100</sup> The Court has reaffirmed its commitment to protection of the first amendment rights of students in subsequent decisions.<sup>101</sup>

Both before and after *Tinker*, a number of cases have arisen challenging editorial control over student newspapers at state universities.<sup>102</sup> Most of these cases have involved censorship of alleged

ing of state action in this context. See *Moose Lodge No. 17 v. Irvis*, 407 U.S. 163 (1972), where the fact that a "private club" was subject to a certain amount of regulation by the state was not sufficient to support a finding of state action.

Many of the Court's most expansive "state action" decisions have been in the area of racial discrimination, the historical target of the fourteenth amendment. It is questionable whether the Court would strive quite so hard to find state action in an ostensibly "private" institution when racial discrimination is not involved.

A finding of state action would presumably subject the private university to a wide range of constitutional limitations. Thus a private university might think twice before defending against a libel claim by urging that because of the presence of state action it was unable to exercise "control" over the student paper.

97. See H. FRIENDLY, *supra* note 96, at 12, 30.

98. 393 U.S. 503 (1968).

99. 393 U.S. at 506.

100. 393 U.S. at 511.

101. See, e.g., *Papish v. Board of Curators*, 41 U.S.L.W. 3496 (U.S., April 12, 1973); *Healy v. James*, 408 U.S. 169 (1972). In *Healy* the Court observed that "the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large." 408 U.S. at 180.

102. *Joyner v. Whiting*, No. 72-1630 (4th Cir., April 10, 1973) (state college president may not cut off funds of the student newspaper because he disagrees with editorial views expressed, but the president may seek judicial relief against discriminatory practices by the paper); *Lee v. Board of Regents*, 441 F.2d 1257 (7th Cir. 1971) (once the student newspaper was open to commercial advertisements, the state university administration and student editorial board could not reject an advertisement due to its editorial content); *Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971) (state college's attempt to change student newspaper from a forum of student expression to instructional tool controlled by mass communications department was not done with sufficient clarity and notice to allow an exercise of restraint over student writing); *Korn v. Elkins*, 317 F. Supp. 138 (D. Md. 1970) (state university officials could not restrain publication of a picture of a burning American flag on the cover of a student publication); *Antonelli v. Hammond*, 308 F. Supp. 1329 (D. Mass. 1970) (faculty advisory board of a state college

obscenity<sup>103</sup> or controversial political issues.<sup>104</sup> While no reported case has squarely faced the issue of whether the university may exercise control to prevent the publication of defamatory material in a student paper,<sup>105</sup> no university has been able to establish its right to exercise editorial control over the student newspaper.<sup>106</sup>

The "material and substantial disruption" test of *Tinker* evolved in the context of symbolic speech in the high school setting. Our society assumes a greater degree of maturity on the part of university students than high school students; the exercise of free expression is less likely to result in material and substantial disruption in the university than in the high school.<sup>107</sup> As a practical matter it will be

student newspaper could not require student articles to be submitted for approval prior to publication); *Dickey v. Alabama State Bd. of Educ.*, 273 F. Supp. 613 (M.D. Ala. 1967) (state college administration could not prohibit the editor of student newspaper from publishing material critical of the state legislature or suspend him from school for doing so); *Panarella v. Birenbaum*, 37 App. Div. 2d 987, 327 N.Y.S.2d 755 (1971) (administration of state colleges may not prohibit "attacks on religion" in student newspapers). Although it concerned a high school newspaper, *Zucker v. Panitz*, 299 F. Supp. 102 (S.D.N.Y. 1969) (high school administration could not prohibit a student newspaper from publishing a paid political advertisement where the paper had previously been used as a forum for free expression of ideas), has apparently been influential in the university newspaper cases. It should be noted that in all of these cases the courts addressed themselves to the individual facts at hand and did not explore the ultimate limits of the first amendment rights of students. Most of the courts acknowledged that the "material and substantial disruption" test of *Tinker* was applicable to the student press but concluded that the administration failed to establish any such disruption. See generally Trager, *Freedom of the Press in College and High School*, 35 ALBANY L. REV. 161 (1971).

Questions concerning the first amendment rights of university students have recently arisen in other contexts as well. *Smith v. University of Tenn.*, 300 F. Supp. 777 (1969), and *Brooks v. Auburn Univ.*, 296 F. Supp. 188 (1969), invalidated university regulations prohibiting students from inviting certain types of individuals to speak on campus. *Hammond v. North Carolina State College*, 272 F. Supp. 947 (D.S.C. 1967), struck down university regulations which required prior approval of parades and demonstrations.

103. See, e.g., *Antonelli v. Hammond*, 308 F. Supp. 1329 (D. Mass. 1970).

104. See, e.g., *Joyner v. Whiting*, No. 72-1630 (4th Cir., April 10, 1973); *Lee v. Board of Regents*, 441 F.2d 1257 (7th Cir. 1971); *Dickey v. Alabama State Bd. of Educ.*, 273 F. Supp. 613 (M.D. Ala. 1967).

105. In *Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971), the faculty advisor of a state college student newspaper required the student editors to delete a seemingly mild editorial and the caption to an editorial cartoon from the paper on the grounds that they were potentially libelous. The court did not reach the question of whether the administration could censor "potentially libelous material" but did observe that

[i]n the context of an educational institution, a prohibition on protected speech, to be valid, must be "necessary to avoid material and substantial interference with schoolwork or discipline." *Tinker v. Des Moines Independent Community School District* . . . No such justification has been offered here. While Mr. McAvoy did suggest that he was concerned about libel, defendants made no effort to prove that plaintiff Trujillo's writings were libelous as a matter of Colorado law and also unentitled to first amendment protection as a matter of federal law.

322 F. Supp. at 1270-71.

106. See cases cited in note 102 *supra*.

107. A number of cases interpreting the scope of *Tinker* at the high school level have concerned school regulations imposing prior submission and approval requirements on the distribution of literature (generally applied against underground newspapers) on the



seldom, if ever, that the courts will approve editorial restraints on a student newspaper imposed by a state university under the *Tinker* test. The degree of first amendment protection accorded the student press may well be as great as that accorded the commercial press.

The most effective means by which a university could control the editorial policy of the student press would be through some form of regulation requiring prior approval of articles. Yet, such a requirement would appear to fall within *Near v. Minnesota's*<sup>108</sup> famous admonition that "liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship."<sup>109</sup> While the Court has observed that libel is not constitutionally protected speech,<sup>110</sup> this does not necessarily mean that prior restraints imposed upon the dissemination of libel are constitutionally acceptable. *Near* itself suggests the contrary since the Court invalidated a statute aimed at enjoining the publication of a "malicious, scandalous and defamatory newspaper."<sup>111</sup> Moreover, while the *Near* Court provided explicit exceptions to the prior restraint doctrine for material affecting the national security during the time of war, obscenity,<sup>112</sup> and material inciting acts of violence or urging the overthrow of government,<sup>113</sup> no similar exception was created for libel. Moreover, the recent landmark case of *New York Times v. United States*<sup>114</sup> bears witness to the Court's continuing disapproval of prior restraints on the press even where important national security interests may be at stake. So long as the defamation laws continue to exist, however, they

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high school premises. See, e.g., *Fujishema v. Board of Educ.*, 460 F.2d 1355 (7th Cir. 1972); *Quarterman v. Byrd*, 453 F.2d 54 (4th Cir. 1971); *Eisner v. Stamford Bd. of Educ.*, 440 F.2d 803 (2d Cir. 1971); *Scoville v. Board of Educ.*, 425 F.2d 10 (7th Cir. 1970). Because of the need for stricter discipline at the high school level as well as the possible differences between publishing and circulating material, these cases should not be considered controlling on the question of administration censorship over student newspapers in the university context.

108 283 U.S. 697 (1930).

109 283 U.S. at 716.

While the doctrine of prior restraint is firmly established, the Court has never defined its contours with complete clarity. At its very least the doctrine means that "[a]ny system of prior restraints of expression [bears] a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1962). For a discussion of the various aspects of the doctrine see T. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 503-12 (1970); Emerson, *The Doctrine of Prior Restraint*, 20 *LAW & CONTEMP. PROB.* 648 (1955) [hereinafter Emerson, *Prior Restraints*]. See also *Times Film Corp. v. Chicago*, 365 U.S. 45, 50-78 (Warren, C.J., dissenting), 78-84 (Douglas, J., dissenting).

110. *Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952).

111. 283 U.S. at 702.

112. In *Kingsley Books v. Brown*, 354 U.S. 436, 441, 445 (1957), however, the Court suggested that the doctrine of prior restraint is applicable even in the area of obscenity.

113. 283 U.S. at 716.

114. 403 U.S. 713 (1971).

provide a private remedy for libel, thereby minimizing the need for prior restraint. Prior restraint of the press as a means of preventing the dissemination of libel is contrary to the established policies of the first amendment.<sup>115</sup>

Even if prior restraints on student newspapers were not per se invalid, it might be impossible to devise a system of prior review that would be constitutionally adequate from a procedural standpoint.<sup>116</sup> In the area of obscenity the Court has approved prior review of motion pictures,<sup>117</sup> even though they qualify as speech under the first amendment.<sup>118</sup> However, in *Freedman v. Maryland*<sup>119</sup> the Court declared that to withstand constitutional scrutiny such a system must comply with certain procedural requirements. First, the state must bear the burden of proof.<sup>120</sup> Second, any advance submission require-

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115. In *Antonelli v. Hammond*, 308 F. Supp. 1329, 1335-38 (D. Mass. 1970), the court applied the doctrine of prior restraint to invalidate a system under which a student newspaper was required to submit all material to a faculty committee for prior approval.

It might be urged that an exception to the prior restraint doctrine should be made where the student press is involved on the ground that the potential for disruption of the academic community through the publication of libelous material would warrant some degree of prior review. But it is unlikely that libelous material in a student paper would be capable of wreaking havoc on the university community. As the court noted in *Antonelli*, 308 F. Supp. at 1336:

Obscenity in a campus newspaper is not the type of occurrence apt to be significantly disruptive of an orderly and disciplined educational process. . . . The university setting of college-age students being exposed to a wide range of intellectual experience creates a relatively mature marketplace for the interchange of ideas so that the free speech clause of the First Amendment with its underlying assumption that there is positive social value in an open forum seems particularly appropriate.

Indeed, considering the current state of student activism, prior restraint of a student publication by the university might be more likely to cause a "material and substantial disruption" by triggering demonstrations, protests and classroom boycotts than practically anything that the paper could print.

In regard to libel, the student press might be distinguished from the commercial press in terms of the relationship between editorial control and potential liability. The owners of a commercial newspaper (corporate considerations aside) who may be potentially liable for defamation judgments may impose as much prior restraint on their editorial staff as they feel necessary to protect themselves. Yet, the doctrine of prior restraint would appear to prohibit the university from exercising similar review over its staff although it might also be held liable for any defamation published. If it were possible to censor with precision then perhaps this argument would be entitled to greater consideration. But one of the rationales underlying prohibition of prior restraints is that censorship invariably tends toward excess. Emerson, *Prior Restraint*, *supra* note 109, at 656-59. If the university were allowed a right of prior approval to protect itself against liability for defamation, the inevitable result would be the suppression of a certain amount of nondefamatory material regardless of good faith on the university's part. The important first amendment values at stake should not be sacrificed to this end since the university is capable of protecting itself against liability through other means.

116. See Monaghan, *First Amendment "Due Process,"* 83 HARV. L. REV. 518 (1970).

117. *Times Film Corp. v. City of Chicago*, 365 U.S. 43 (1961).

118. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 497 (1952).

119. 380 U.S. 51 (1965).

120. 380 U.S. at 58.

ment must not be administered so that a censor's adverse decision would carry practical finality.<sup>121</sup> Third, the procedure must provide for a prompt judicial determination of the question.<sup>122</sup>

If prior restraints were allowed for student newspapers, it is probable that the Court would at least insist upon adherence to these procedural requirements.<sup>123</sup> Yet, it is unlikely that they could be met where a newspaper is involved. The "immediacy" value of news articles and editorials is far greater than that of motion pictures. It would be difficult, if not impossible, to ensure judicial review promptly enough to protect the "newsworthiness" of the material in issue. As a practical matter, the university might not consider censorship worth the effort and expense when faced with the burden of proof in an official proceeding subject to judicial review.

Even in the absence of prior restraint, the university might be able to exercise some degree of editorial control through subsequent disciplinary proceedings against the newspaper. Of course, the university would run afoul of the first amendment if it attempted to discipline student editors simply because it disagreed with the content of published material.<sup>124</sup> Moreover, to accord fourteenth amendment due process, the university would have to promulgate clear and reasonable standards of conduct as well as provide constitutionally acceptable notice and hearing.<sup>125</sup> In establishing standards of conduct which would regulate activity in the area of the first amendment, the university would need to be extremely precise in order to avoid foundering on the overbreadth<sup>126</sup> or vagueness doctrines.<sup>127</sup> Perhaps the university could validly discipline student editors for intentional and gross violations of the canons of journalistic ethics or for maliciously publishing material which they knew to be false or for publishing a statement with reckless disregard for its truth or falsity. While such a practice would constitute some degree of editorial control, it is a far cry from a procedure of prior approval under which no allegedly libelous material would ever see daylight.

It must be concluded that the state university can exercise little editorial control over a student newspaper without colliding with the

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121. 380 U.S. at 58.

122. 380 U.S. at 58-59.

123. *Antonelli v. Hammond*, 308 F. Supp. 1329, 1335 (D. Mass. 1970), applied the *Freedman* standards to censorship of a student newspaper.

124. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 508-09 (1968); *Antonelli v. Hammond*, 308 F. Supp. 1329, 1337 (D. Mass. 1970).

125. See, e.g., *Healy v. James*, 408 U.S. 169 (1972); *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 158 (5th Cir. 1961). Cf. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Fuentes v. Shevin*, 407 U.S. 67 (1972).

126. See *Gooding v. Wilson*, 405 U.S. 518 (1971). See also Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844 (1971).

127. See *Baggett v. Bullitt*, 377 U.S. 360 (1963). See also Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 100 U. PA. L. REV. 67 (1960).

first amendment. Because the Supreme Court has not directly confronted the issue, however, it would not be surprising to find that many state universities actually exercise a substantial degree of editorial control over student publications whether they may constitutionally do so or not. When such control exists in fact, it should be taken into consideration in determining control for vicarious liability purposes. Analysis may therefore focus on public universities that both do not in fact control and cannot constitutionally control the actions of student authors and editors leading to the publication of a libel. In regard to these universities, does the first amendment negate the earlier finding of agency and therefore vicarious liability?

The courts have never clearly indicated how complete the principal's domination must be under either the *Singer* text, consisting of the right to control the agent's physical movement, or the enterprise test, consisting of the right to make management and policy decisions. The application of *Singer* is uncertain because, although the university does not retain control over the editorial work, it still has the right to control many other details. Similarly, the result under the enterprise test cannot be precisely determined. The university no longer has the right to make managerial decisions in the area of editorial policy, which is most critical to libel; however, it retains the right to make other important policy decisions, for example, those concerning the newspaper's financial structure. Most importantly, the university surely always retains the right to determine whether to sponsor a student newspaper at all. In short, while the first amendment may negate the most important aspect of the control relationship between a university and its student newspaper, other aspects of the control relationship remain. Given the fluidity of the control tests, a court might properly reach whatever result it felt was just.

The reasons for imposing liability upon the university for a student newspaper's defamatory torts are founded upon the traditional justifications of vicarious liability. A fundamental consideration is the desire to compensate for the injury to the plaintiff's reputation. The plaintiff himself will usually be forced to absorb the loss unless the university provides compensation.<sup>128</sup> In addition, the university is likely to have the most experience in evaluating and insuring against the risks of a libel action.<sup>129</sup> It may also be able to self-insure or to lower the cost of libel insurance by purchasing it in a package covering all insurance needs.<sup>130</sup> Moreover, the university may spread the costs of insurance, or a libel judgment, over the student body through higher tuition.<sup>131</sup>

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128. See text accompanying note 82 *supra*.

129. See note 40 *supra*.

130. See notes 147-51 *infra* and accompanying text.

131. See note 40 *supra*.

The policy considerations against imposing vicarious liability arise from the application of the first amendment. When the university is constitutionally forbidden from exerting control over the newspaper it seems unfair to impose liability upon it. The university cannot take preventive action against the publication of the libel except in the most limited sense of closing the newspaper down.<sup>132</sup> A second major consideration is that the imposition of vicarious liability upon the university may ultimately be detrimental to the student press. If a university could be held vicariously liable even though virtually powerless to prevent the publication of libel, the consequences for student newspapers could be onerous. Concern for the burden of a libel action might cause the university to place limits upon or even to eliminate student newspapers. The essence of the controversy, then, can be reduced to one of balancing the importance of compensation against considerations of fairness to the university and the potential adverse effect on the student press. The plaintiff's interest in being compensated for the injury to his reputation should yield to the protection of the press and the facilitation of the free exchange of ideas.

Public universities that do not exercise editorial control over student publications should not be held vicariously liable for defamatory material appearing in those student publications. Vicarious liability should, however, be imposed generally upon both the public universities that in fact exercise editorial control and upon all private universities which, free of the first amendment limitation, have a right to control their student publications, whether it is exercised or not.

### B. *Communication Liability*

Communication liability is based on the peculiar nature of defamation. Neither libel nor slander are actionable unless they are communicated to others,<sup>133</sup> a process referred to as publication.<sup>134</sup> In view of the critical importance of publication, liability has been extended beyond the author to include those who communicated, or cooperated in communicating, defamatory statements.<sup>135</sup> Communication liability is a form of personal rather than vicarious liability. Some form of direct participation by the university in the publication of the libel is necessary. Arguably, the university becomes a coopera-

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132. However, its decision not to sponsor the student newspaper may not be based on its opposition to the editorial policy. *Joyner v. Whiting*, Civil No. 72-1630 (4th Cir., April 10, 1973). See notes 98-115 *supra* and accompanying text.

133. The communication need not be made to a mass audience. Communication of a libel to one other person has been deemed actionable. *Ostrowe v. Lee*, 256 N.Y. 36, 175 N.E. 505, 244 N.Y.S. 28 (1931).

134. 1 F. HARPER & F. JAMES, *supra* note 38, § 5.15 (1956).

135. *Grinnell v. Cable-Nelson Piano Co.*, 169 Mich. 183, 191, 135 N.W. 92, 95 (1912). See also *Youmans v. Smith*, 153 N.Y. 214, 218-19, 47 N.E. 265, 266 (1897).

tive participant in the publication of the libel whenever it aids the student newspaper by providing various forms of financial aid.<sup>136</sup>

Communication liability may be applicable where vicarious liability is not. For example, in *La Barge v. Daily Orange*,<sup>137</sup> a \$938,000 libel action was filed against Syracuse University, its unincorporated student newspaper, the author, editors, and financial advisor. Syracuse University moved for dismissal as to itself, arguing that the only basis for liability was *respondere superior*, and that the doctrine was unavailable since the master-servant relationship between the university and the student editors was absent.<sup>138</sup> The court rejected the contention that vicarious liability was the only appropriate theory, holding:

The label on the relationship—whether they are principal and agent, employer and employee or fellow actors—is immaterial. "He who furnishes the means of convenient circulation, knowing, or having reasonable cause to believe, that it is to be used for that purpose, if it is in fact so used, is guilty of aiding in the publication and becomes the instrument of the libeler."<sup>139</sup>

While the case was ultimately dismissed for failure to prosecute,<sup>140</sup> it indicates at least one court's willingness to adopt the theory of communication liability in a libel case involving a student newspaper.

However, several barriers may obstruct the development of communication liability as a viable theory in the university-student newspaper context. First, it is unclear how much participation is required to impose liability upon the university. At least where the newspaper is a forum protected by the first amendment, the university cannot control editorial policy and is reduced to the role of a passive supplier of services, much like an ordinary commercial supplier or a charitable donor. Second, while communication liability does not allow, in the absence of privilege, the defendant's good intentions or lack of negligence in publishing the libel to serve as a defense, this strictness has

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136. The informal survey conducted by the *Review* revealed that over ninety per cent of the student publications received some form of aid and assistance from their schools. See Appendix *infra* for a percentage breakdown of the form of assistance received.

137. Civil No. 70-6597 (N.Y. Sup. Ct., 5th Dist., April 8, 1972) (dismissed for failure to prosecute).

138. Brief for Syracuse University in support of Motion To Dismiss at 2-17, *La Barge v. Syracuse Univ.*

139. *La Barge v. Daily Orange*, Opinion of March 4, 1971, denying defendant's, Syracuse University, motion to dismiss at 6, quoting *Youmans v. Smith*, 153 N.Y. 214, 218-19, 47 N.E. 265, 266 (1897).

140. Subsequent to the denial of Syracuse University's motion to dismiss, the United States Supreme Court decided *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971). See text accompanying notes 27-30 *supra*. In light of this and plaintiff's failure to proceed with preliminary examinations, the suit was summarily dismissed, Renewed Motion To Dismiss by Syracuse University (April 8, 1972); letter from Attorneys for Syracuse University to *Michigan Law Review*, Nov. 21, 1972.

been relaxed for some secondary disseminators of libel. Those who are merely outlets for mass communication journals, and who really have little control over the editorial process, may avoid liability by proving that they did not know, and were not negligent in failing to discover, the libel contained in the journals.<sup>141</sup> Where the university is prohibited by the first amendment from the exercise of editorial control, perhaps it, too, should be entitled to the same defense based on the absence of negligence.

Finally, the utility of the communication liability theory, in regard to both public and private universities, is significantly limited by the *New York Times Co. v. Sullivan* privilege of nonmalicious reporting.<sup>142</sup> Since communication liability is imposed upon the university because of its own actions as a participant in the publication of the libel, it might be expected that actual malice on the university's part<sup>143</sup> would have to be shown if the statement fell within the ambit of *New York Times*. In comparison, vicarious liability would not require a showing of actual malice on the university's part. Rather, the plaintiff would only be required to show that the author harbored malice, for that malice would be imputed to the university as principal.<sup>144</sup> A showing that the university itself maliciously participated in the publication of the libel would be unlikely. At the very least it would require proof that the university entertained serious doubts about the truth of material being printed in the newspaper.<sup>145</sup>

### III. CONCLUSION: PLANNING TO MINIMIZE LIABILITY

This Note has examined the traditional theories that might give rise to a university's liability for defamatory material published in its student newspaper. Clearly, the threat of liability is cause for some concern among university administrators. Therefore, it is worth exploring several planning devices that could be used to minimize or eliminate a university's liability.

As was discussed above,<sup>146</sup> separate incorporation of the student newspaper will provide only an uncertain measure of protection for

141. *Hartmann v. American News Co.*, 171 F.2d 581 (7th Cir. 1948); *Albi v. Street & Smith Publications*, 140 F.2d 310 (9th Cir. 1944); *Bowerman v. Detroit Free Press*, 287 Mich. 443, 283 N.W. 642 (1939); *Balabanoff v. Fossani*, 192 Misc. 615, 81 N.Y.S.2d 752 (Sup. Ct. 1948).

142. See notes 22-30 *supra* and accompanying text.

143. This would, of course, require a showing of malice on the part of some agent of the university who was either actually or apparently authorized to exercise some form of supervision or control over the newspaper or authorized to represent the university to the public since a university could only act through its agents.

144. See, e.g., *Atlanta Journal Co. v. Doyal*, 82 Ga. App. 321, 334, 60 S.E.2d 802, 813 (1950). See generally RESTATEMENT, *supra* note 41, § 272.

145. See *St. Amant v. Thompson*, 390 U.S. 727 (1968).

146. See notes 85-93 *supra* and accompanying text.

the university. The surest device for minimizing the risk of university liability is insurance against libel. This is already a popular form of protection; over fifty per cent of schools answering the *Review* survey carried some form of libel insurance.<sup>147</sup> As Professor Calabresi has pointed out, part of the justification for vicarious liability derives from the idea that "the master is the best insurer, both in the sense of being able to obtain insurance at the lower rates and in the sense of being most aware of the risk."<sup>148</sup> Insurance can minimize risk of liability without altering the relationship between the university and the student publication. A disadvantage of insurance, especially for the smaller private college, is cost,<sup>149</sup> which may become an important factor during these times of rapidly increasing costs of education, rising tuition, and shrinking enrollment.<sup>150</sup> Libel insurance also may not cover punitive damages.<sup>151</sup> Yet, while insurance may be sufficient from the university's point of view, it has one serious deficiency: it is not preventive. Insurance does nothing to correct problems in personnel or procedure that led to publication of a libel.

Generally, the college campus functions as an enclave for the free interchange of ideas and opinions; in a real sense the campus is society's outpost of reason. It is fitting that student newspapers be given a large measure of independence. However, the student editors and staff must understand not only the rights but also the responsibilities of carrying on a free press. The students should understand what a libel is, what their liability is for defamation, and what they can do to prevent it. To achieve this goal the university should invite journalists to conduct seminars on professional responsibility.<sup>152</sup> Moreover, the student newspaper and the university should develop informal procedures for dealing with potentially libelous material. For example, at the University of Michigan, if the Michigan Daily editors believe material to be potentially libelous, they consult either a law professor or another attorney and discuss it. The procedure is informal, and the student editors make the ultimate decision as to publication.<sup>153</sup>

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147. See Appendix *infra*.

148. Calabresi, *supra* note 39, at 543.

149. For example, the cost of insurance against liability for libel, invasion of privacy, and similar torts for a Midwest newspaper with a circulation of 10,000 and a "good record" is 700 dollars annually (2,500 dollars deductible, 300,000 dollars maximum coverage). Figures provided by Mindus & Mindus, Inc., Ann Arbor, Michigan.

150. See *Recession Hits the Colleges*, *NEWSWEEK*, March 23, 1971, at 63.

151. One university attorney responding to the *Review* survey noted that the university's insurance policy would not cover punitive damages.

152. See generally Nelson, *Newsman and the Times Doctrine*, 12 *VILL. L. REV.* 738 (1967); McLeod & Hawley, *Professionalization Among Newsmen*, 41 *JOURNALISM Q.* 529 (1964).

153. Conversation with Professor Berlin, Chairman, Board of Student Publications, University of Michigan, Oct. 15, 1972.



Such measures require a high degree of good faith both by students and administration. But that is not inconsistent with the adult relationship which should prevail. While such procedures do not provide a legal insulation from liability, when carried on in an atmosphere of good faith, they are able to treat the roots of the problem rather than merely the symptoms.

## APPENDIX

During the preparation of this Note, the *Review* undertook an informal survey by mailing questionnaires to the editors-in-chief of fifty university newspapers—including those at large, small, public, and private institutions—as well as to the attorneys of these newspapers. The editors-in-chief of the newspapers were asked factual questions concerning the size and composition of their annual budgets, aid furnished to them by the university, and procedures used for screening potentially libelous material. The university attorneys were asked whether the school newspaper was separately incorporated, whether the university exercised, or could exercise, control, whether the university had ever been sued for libel in a student publication, and whether the university had insurance that could cover such a suit.

### I. NEWSPAPER SURVEY

Twenty-six newspapers responded as indicated below.

1) Annual Budgets (total of twenty-six)	\$3,600,000
Largest	700,000
Smallest	1,500
2) Newspapers receiving aid from the university, in the form of:	
a) Student activity fees or other university funds.	19/26 (73%)
b) Material and services donated without charge or below market cost.	21/26 (81%)
office space	16/26 (62%)
office supplies	10/26 (38%)
duplicating services	9/26 (38%)
campus mail service	18/26 (69%)
miscellaneous (budget planning, transpor- tation, other)	12/26 (23%)
Total of newspapers receiving <del>some</del> form of aid from the university.	24/26 (92%)

## II. ATTORNEY SURVEY

Twenty attorneys responded as indicated below.

- 1) Form of the newspaper's organization
  - a) separately incorporated 5/20 (25%)
  - b) unincorporated 15/20 (75%)
- 2) Does the university exercise control, or could it exercise control over the student newspaper?
  - Yes) 15/20 (80%)
  - No) 4/20 (20%)

Of the four answering no, three were at universities with separately incorporated student newspapers.

- 3) Has the university ever been sued for libel in a student publication?
  - Yes) 5/20 (25%)
  - No) 15/20 (75%)

Of these universities one reported being sued three times, for a total of seven suits. Two universities supplied citations. *See* note 21 *supra*.

- 4) Does the university have insurance that would cover a libel action?
  - Yes) 13/20 (65%)
  - No) 7/20 (35%)

## 5. RACIAL DISCRIMINATION

II-G. Joyner v. Whiting, 341 F. Supp. 1244, 477 F. 2d 456 (1973).

Plaintiffs in this case were the student editor-in-chief of the campus newspaper, The Campus Echo, and the student body president of North Carolina Central University, a predominantly black, state-supported school. They brought this action seeking to enjoin the president of the university, defendant Whiting, from failing to support financially The Campus Echo. The defendant had originally temporarily withheld funds, which came from compulsory student fees, from the newspaper until an agreement was reached between the administration and newspaper board as to what journalistic standards the publication should meet. Ultimately, this issue wasn't settled and President Whiting announced "the permanent and irrevocable termination" of the already mandated funding of the newspaper.

President Whiting's reasons for these actions were well-intended and well-founded. A number of racially discriminatory positions had been taken by the newspaper staff. The plaintiff Joyner had informed the administration that no white or other non-negro would be able to serve on the staff of The Campus Echo. Then, the newspaper published the following statement: "Attention: Beginning next issue The Campus Echo will not run white advertising." In other portions of the issue were articles expressing opposition to and dissatisfaction with the increasing number of white and non-negro enrollees at the university. As a result of these racially discriminatory actions, the defendant refused to permit the continued funding of the newspaper.

The district court judge denied the plaintiff's request for relief. Since The Campus Echo was established and financially supported through compulsory student fees, and since its editor-in-chief received a salary, the newspaper was, as a matter of law, an agency of North Carolina Central University and of North Carolina. This being the case, the school, its agencies, and official representatives were subject to the constraints of the Fourteenth Amendment and the Civil Rights Acts. The court found plaintiffs' actions were constitutionally impermissible. Therefore, the state and the university could no longer lawfully support The Campus Echo. Thus, defendant Whiting's action was not only constitutionally permissible, but it was constitutionally required.

On the other hand, the Court said that the defendant could not temporarily suspend the funding of The Campus Echo. It feared that the defendant would control the paper's content and staff. Consequently, the president had no choice but to abolish the newspaper altogether. Indeed, the Court said that "future financial support for any campus newspaper at North Carolina Central University, of any sort, by any means, direct or indirect, from any source of funds, is declared unlawful." The reason for this broad (in the author's opinion, over-broad) prohibition was to protect plaintiffs' First Amendment rights. No matter how praiseworthy the concept of integration may be, the university officials could not withhold funds for the campus newspaper contingent upon the editorial board's renouncement of racist policies and the adoption of a non-discriminatory posture. "No orthodoxy or particular point of view may be imposed by any means, direct

## 6. RELIGIOUS DISCRIMINATION

II-H. Panarella et al v. Birenbaum, et al.  
Mahoney et al v. Schueller, et al.  
302 N.Y.S. 2d 427 (June 25, 1969).

The First and Fourteenth Amendments to the Federal Constitution require the state to maintain a stance of neutrality vis-a-vis religion. The state may neither advance nor hinder religion.

Student at Staten Island published a newspaper called the "Dolphin", while students at Richmond College published the "Richmond Times". Both schools are tax supported public institutions. Both newspapers:

- 1) display the official seal of the City University of New York,
- 2) have faculty members as advisors,
- 3) are partially funded by a mandatory fee collected by the institution from the students,
- 4) have office space and telephones on the campus.

The "Dolphin" carried an article entitled "The Catholic Church—Cancer of Society", which was an attack on the Roman Catholic Church.

The "Richmond Times" published an article which was critical of Jesus.

Student-taxpayers at the two schools sued the institutions, seeking to require the institutions to adopt and enforce regulations prohibiting derogatory and blasphemous attacks on religion.

The defendants advanced two arguments:

- 1) That the institutions connection with the publications was "remote", and thus, no state action could be found.
- 2) That to prohibit publication of articles would constitute a denial of the freedom of speech and freedom of the press provisions of the First Amendment.

The court rejected both arguments, holding that state action and an establishment of religion was clearly present as a result of the use of state facilities and personnel, and that there was no violation of the students freedom of speech.

The students are perfectly free to hold views against religion, to voice these views, and to publish them. They may not however, utilize public facilities to do so . . . . A government that finances religion is no longer neutral. Similarly a government that underwrites attacks on religion is no longer neutral.

The court required the college administration to "prevent publication of such articles in the future, whether by enforcement of existing regulations, enactment of new ones, or otherwise."

The reader should note that in New York City, the college administrator is required to suppress the publication of articles in public college student newspapers (which receive state support) if such articles violate the absolute neutrality required by the First Amendment.

The reader should also re-read the Joyner synopsis, and query why an attack on religion should be prohibited, while an attack on race may not be.

8. PAPER DEFINED AS "INSTRUCTIONAL TOOL"

II-J. Trujillo v. Love, 322 F. Supp. 1266 (D. Colo. 1971).

Plaintiff, Dorothy Trujillo, a student at Southern Colorado State College, brought this action seeking a declaration that the defendants' conduct in censoring her writing and suspending her as a student newspaper editor was an unconstitutional interference with her First Amendment rights. She sought reinstatement to the position of managing editor of the student newspaper, as well as back pay and an injunction restraining the defendants from interfering with her freedom of expression. Prior to July, 1970, the student newspaper involved, the "Arrow", had been financed with student activity fees, but because of a student government decision to allocate more funds to other student activities, the amount of money budgeted for the "Arrow" after July of that year had diminished. The college officials decided to help the student newspaper. They agreed to pay the cost of publishing the newspaper. The student government had only to pay for staff salaries and supplies. The college officials, now with a stake in the student newspaper, promulgated a publications policy under which the newspaper was to be operated as an "instructional tool" for journalism students, under faculty supervision. The failure of the administration to effectuate this policy and their attempt to review certain student writings in advance of publication are the key facts in this case.

Plaintiff had written and was prepared to publish two editorials, one critical of the college president and the other critical of a local judge. The faculty advisor to the newspaper would not permit their publication, stating that he felt them to be potentially libelous and a violation of journalism's canons of ethics. The plaintiff was thereupon suspended from her position because her opposition to the administration's action was considered by them to be evidence of her "unwillingness to learn."

The court sustained the plaintiff's claim since there was evidence that the college's new publication policy had not been sufficiently communicated to the student staff or discussed in the journalism classes, and that the faculty requirement directing the students to submit "controversial" writings for approval was not defined. The court found that "prior to the summer of 1970 the "Arrow" served as a forum for student expression and the new policy of the administration and faculty was not thereafter put into effect with sufficient clarity and consistency to alter the function of the newspaper." It concluded that, in fact, the newspaper had continued to serve as a student forum and that the sanctions and restraints visited upon the plaintiff and her writing were violative of her First Amendment rights.

The court went on to suggest that if the college officials had, in fact, implemented their publication policy (to operate the newspaper as an "instructional tool" for the journalism students) and fully communicated their intention to students, then the administration's action may have been upheld.

## 9. DISTRIBUTION OF UNDERGROUND PAPER

Channing Club v. Board of Regents of Texas Tech University,  
317 F. Supp. 688 (N.D.Tx. 1970)

The plaintiffs in this case sought declaratory and injunctive relief against the officials of Texas Tech University who prohibited the distribution on campus of the "Catalyst", a newspaper published by the Channing Club, and unincorporated association recognized by Texas Tech University, a public school of higher education. The publication contained some language which university officials found objectionable; they outlawed its distribution since they felt that they had the "right to prohibit matter which does not have any literary value and which uses lewd, indecent, and vulgar language."

The court granted the requested relief. The plaintiffs offered evidence which showed that there were areas of the campus which had been designated for the sale and distribution of printed matter. Further, they showed that publications sold in these areas contained the same or similar language that the school officials found objectionable in the "Catalyst", yet these other publications had not been prohibited from sale or distribution on campus. There were also publications in the university library which were either required or recommended reading and which also contained examples of the language found to be objectionable in the Channing Club's newspaper. From the evidence presented, the court held that the university's action was discriminatory and a denial of "equal protection of the laws." The defendants made no showing that a campus disruption or violation of other students' rights would be likely to occur if the "Catalyst" were distributed.

The Channing Club case is important because it shows that university bans upon sale and distribution of literature are vulnerable to equal protection challenges as well as to free speech and due process attacks. It also provides some hints as to what facts may be considered, individually or collectively, to determine "substantial disruption"—that is, disruption of the university or its activities by threats or act of violence, hostile remarks, and restrictions on the rights of other students. Since a threat of substantial disruption would have been grounds to curtail free expression, the court considered this rather fully. The court stated that university officials must be able to point to something more than ungrounded fears when restricting free expression. It said, "It is not enough that administrative officials anticipated the possibility of some disturbance; uncrystallized apprehension of disruption cannot overcome the right to free expression."

## Chapter Three

### THE FEASIBILITY STUDY

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C. Equipment Inventory . . . . .	III-1
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## Chapter Three

### The Feasibility Study

#### A. GATHERING DATA.

The first step in determining feasibility of independence is to gather from the Business Office of the student press financial and marketing, space, equipment, and general budget information for the preceeding five years, together with projections of needs for the next three years. At this point, one must prepare to prepare a thorough inventory of existing resources, and make projections of resource needs on a medium range (3-5 year) basis.

#### B. FINANCIAL STATEMENTS.

It is recommended that the internal auditor of the institution be asked to prepare, if such is not done on a regular basis, complete audits of all student press accounts for the previous 5 years. The preparation of such audits (assuming audits are not regularly done) may turn up discrepancies, including illegalities which can severely disrupt the planning process. It should be noted that the internal auditors may be committed some number of months in advance, thus, it's very important to get the internal auditors working on the accounts as soon as you think you may have an interest in independence.

At one institution at which independence was attempted, the student press accounts were in such bad shape, despite audits in each of the preceeding four years that it took eight months from the time an audit was requested until the audit was completed. Had this institution waited for the audit, the process of preparing for independence would have been lengthened by six months. The institution did not, however, wait until the audit was completed, and the editor strongly recommends that the institution determine with professional staff the nature and extent of existing assets and liabilities of the student press at the earliest possible date.

#### C. EQUIPMENT INVENTORY.

While the audit is being prepared, several other steps can be undertaken. One of the important considerations in student publications is equipment. Student publications programs will use considerable equipment in the nature of desks, typewriters, typesetting equipment and the like, and it is very important to get an early inventory of all equipment, including its depreciated value. When an institution is a state agency, it is important for the planner to check with the state equipment custodian to be sure that there is a clear understanding of the process for declaring equipment surplus or of otherwise establishing a means whereby equipment can be provided to the student press once it becomes independent. It will frequently cost at least \$30-50,000. to provide new office equipment for a student newspaper, and it probably will not be economically feasible

frequently for the newspaper to purchase such equipment. Thus, the institution may be placed in the position of either arranging to lease equipment to the paper, or to have the equipment currently used declared surplus, and effecting a sale of the equipment to the press. It is the editor's experience that declaring equipment surplus is a lengthy and difficult process, involving negotiations with a number of state agencies, and that even after lengthy bureaucratic negotiations, the equipment will be claimed by another state agency. Thus, a lease of equipment to the student press is the most feasible way to guarantee sufficient operating equipment.

#### D. SPACE INVENTORY.

In addition to the equipment inventory, an inventory should be made of space needs. Frequently, the student press will be located in an area of high student traffic and student density, ie., a student union complex. It is not unusual for a student press to have the exclusive use of 1000-3000 square feet of space. Space in a heavily used area of the university is always a matter of great concern to the administrator, as it is becoming increasingly expensive to heat, light, and clean space. In addition, there are frequently more demands by various groups for the use of space than can be accommodated. Thus, it is important to establish the current amount of space the student press is using, the real space needs and the extent to which space use can be justified. As we observed with respect to equipment, perhaps the best way to guarantee continuance of the student press is for the institution to arrange to lease certain space to the paper at a lease rate which provides compensation to the institution for providing utilities and cleaning, while encouraging the press to make wise use of space.

#### E. PERSONNEL INVENTORY.

The third inventory which should be undertaken, is a complete review of all personnel. Hopefully, there will be a position description describing the functions of all university employees who work full-time or part-time with the student press, and of all student employees who are employed less than full-time. In as much as the major share of the budget of the student press will go for salaries, it is crucial for a thorough analysis of personnel needs, and of salaries and benefits.

Particularly where the institution is a public institution or where there is a collective bargaining contract, there may be some number of employees who have the status of career service or merit employees, and whose job rights may create some difficulty for the move to independence. Typically, such career service or merit employees are assisted in finding other positions within the university or other state agencies, assuming they do not wish to be employed by the independent student press. The editor offers the observation that nothing will create more problems to the person investigating the feasibility of independence than the question of what will happen to the full-time employees of the student press. This question deserves the most careful consideration of all, and the reader is

urged to make use of the resources of the institution's personnel office and other institutional agents knowledgeable and expert in personnel matters at an early date.

The investigator should analyze the personnel needs of the operation for the three operating years subsequent to the date that independence becomes effective. In performing this evaluation, the investigator should give careful consideration to those positions which can be performed by less than full-time professional employees, and those functions which can only be performed by full-time professional employees. The example of the University of Oregon, where only the business manager is a full-time professional employee, should be studied.

#### F. MARKETING STUDY.

The fourth matter which should be investigated very carefully, and assistance sought either from private marketing consultants or from faculty and students in the business program of the institution, is the development of an analysis of the market which the student press has for the sale of its product. While it may be difficult to initially consider the question of sale of the paper to students, it will be recalled that the student press has sold advertising for some period of years, a relatively well established advertising market may be readily available. The editor suggests building on this base, and through consultation with advertising professionals on existing independent newspapers in the city, or with marketing consultants determine how much advertising could reasonably be sold during what periods of the year. A review of advertising inevitably leads to a review of personnel involved in advertising, the training which such persons receive, the supervision of advertising salesmen, and their compensation. Another area in which a professional person may well make an excellent contribution is that of a full-time advertising manager.

In addition to personnel who sell advertising, one must review the advertising rates which are charged by the student press. It would be fairly simple to compare the number of readers of the press, and the rate charged by the press, with other independent newspaper operations in the city, and to reach a reasonable rate which enables the student press to be competitive and perhaps to even offer a better advertising product to certain advertisers.

In addition to advertising, one must ask whether there is any market in the service area for printing services. With those student presses which do their own pre-print work, serious consideration should be given to marketing a pre-print service for college departments or other agencies or institutions which have need for lay-out, make-up and related services.

With regard to advertising clients, the investigator should carefully check the possibility of the needs which the institution has for advertising matters which are of public concern. Several institutions have provided a university page of record, on which page are printed official announcements of the institution. The institution pays the standard rate for the purpose of such a page of advertising.

Finally, the question of whether or not the paper itself is sold is a matter which deserves some consideration. Frequently, the newspaper has been given away free for some period of years, and it may be felt that it would not serve the best interests of the paper to suddenly begin to sell its products.

Once the investigator has gathered the inventories of assets and liabilities, has determined what equipment is currently available and what will be needed for the next three years, has inventoried space currently allocated and future space needs, has determined what personnel and what types of personnel are currently employed and what types of personnel will be needed for a period of years, has performed a marketing analysis of services which can be sold and has cranked all this data into a reasonable budgetary projection for a three year time span, then the investigator is able to determine what the anticipated cost of an operation will be, and to compare such costs with the revenues which can reasonably be expected to be generated.

It should be understood that a student press with either a small or a large budget can become independent. To take one extreme, a student press in a community college can become independent with a total operating budget of under \$8,000. once the initial capital outlay for equipment was effected.

An older student press at a large university publishing on a daily basis may have an operating budget of \$200,000. or more annually. Capital outlay required may be \$100,000. or more. Thus, the initial start-up cost for the independent student press at an institution with a history and tradition of excellence may be much greater than at a developing institution.

To take one hypothetical example of a medium sized institution (15,000 students), the following resources will be necessary:

#### SPACE

2000 sq. ft. @ \$3.00 per sq. ft.	\$6,000.00
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#### EQUIPMENT

Desk	
Typewriter	
Chairs	
Telephone	
Photo Lab	
Print and pre-print	\$25,000-150,000.00 initial outlay

#### PERSONNEL

Business Manager	
Secretary	
Advertising Manager	
3 advertising salesmen	
Editor	
2 assistant editors	
20 reporters	\$40,000.00

#### MISCELLANY

Printing	
Paper	
Other expenses	

The data below constitutes a college paper budget for a paper publishing three times a week.

## SALES

Ads	\$131,608.56	based on 15% sales increase
subscriptions	400.00	
TOTAL	<u>\$132,008.56</u>	

## EXPENSES

Salaries	
News	11,000.00
Ads	9,100.00
Commissions	13,093.54
Production	7,200.00
Consultants fee	1,200.00
Fees	600.00
Travel	1,150.00
Dues-sub	300.00
Office supplies	1,000.00
Production supplies	3,000.00
Photo supplies	800.00
Printing	48,534.87
Telephone	1,500.00
Postage	2,500.00
Maintenance	1,400.00
Rental	7,000.00
Bad debts	2,000.00
Misc.	3,000.00
TOTAL	<u>\$114,078.41</u>
NET	17,230.15

## Proposed Salaries

POSITION	EARNINGS/MONTH
----------	----------------

NEWS

Editor	\$200
Managing Editor	150
News Editor	125
Edit. Editor	100
Sports Editor	75
Arts Editor	40
Photog. Editor	80
Copy Editor	60
" "	60
" "	60
Staff writer	50
" "	50
" "	40
" "	40
Proofreader	40
"	40

PRODUCTION

News Prod. manager	90
Adv. Prod. manager	100
Asst. adv. Prod. manager	50
" " " "	50
Circulation manager	110

1973 Printing Costs  
Tabloid Size Paper

<u>Pressrun</u>	<u>8-Page</u>	<u>12-Page</u>	<u>16-Page</u>
10,000	\$161.40	\$204.60	\$247.80
11,000	\$173.40	\$220.20	\$267.00
12,000	\$185.40	\$235.80	\$286.00
13,000	\$197.40	\$251.40	\$305.40
14,000	\$209.40	\$267.00	\$324.60
15,000	\$221.40	\$282.60	\$343.80

Halftones: \$.80 each

Color: \$35

Pickup and Delivery Service at 15 cents per mile.

## Chapter Four

### Implementation: The Florida State University

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## A. THE PLAN

### TASKS TO BE COMPLETED AND TIMETABLE FOR IMPLEMENTATION OF THE INDEPENDENT STUDENT PUBLICATIONS PROGRAM

<u>Task</u>	<u>Initiated</u>	<u>Completion Date</u>	<u>Responsible Person</u>
Audit	1 July 1972	1 October 1972	Director of Internal Control
Response from SPPB as to whether they will establish the private corporation	10 July 1972	17 July 1972	Chairman of SPPB
Retention of lawyer for incorporation procedures	17 July 1972		Chairman of SPPB
Meeting between SPPB and lawyer to determine officers and directors of corporation	18 July 1972	18 July 1972	Chairman of SPPB
First meeting of new Board of Directors	11 August 1972	11 August 1972	Chairman of SPPB and attorney
Drafting of lease for use of space and equipment	1 August 1972	30 August 1972	University General Counsel
Development of an advertising program plan	17 July 1972	10 August 1972 (progress report)	Vice President for Student Affairs and President
Legal research necessary to grant exclusive use of name <u>Florida Flambeau</u>	15 July 1972	15 August 1972	General Counsel of FSU
Drafting contract for University purchase of advertising space in <u>Flambeau</u>	15 July 1972	10 August 1972	General Counsel of FSU
Employment of supportive staff for publications	1 September 1972		New private corporation

<u>Task</u>	<u>Initiated</u>	<u>Completion Date</u>	<u>Responsible Person</u>
Publication of first <u>Flambeau</u> under direction of new independent corporation	19 Sept. 1972		New private corporation

B. STANDARDS OF QUALITY AS ACCEPTED BY THE PUBLICATIONS CORPORATION.

1. Independence. Student publications must be free from undue restraint. At the very least, there should be no prior censorship of their contents. Otherwise, the channel and substance of communication would doubtlessly be constricted. If independence is to be a fact, however, editors and reporters must accept the responsibility for accuracy and objectivity, as well as behavior that is legal and ethical.
2. Timeliness. One dimension of the valuable publication is the currency and relevance of its contents. Thus, every effort should be made to build timeliness into student publications—whether they be disseminated daily or yearly. Nothing, perhaps, is so bland or disconcerting as reading old news or the analysis of an issue long since resolved, irrelevant, or simply already "beat to death."
3. Accuracy. Student publications must exemplify accuracy in reporting. Not only is accuracy a function of control techniques, it is also a product of accepting a philosophy of reporting that will guarantee, insofar as possible, that the contents of the publication present as complete a picture as possible of the reported event.
4. Objectivity. The publication must be a source of objective reporting of events. At the same time, it must provide a forum for a balance of opinions; that is to say, editors and reporters alike must endeavor to give readers an exposure to all sides of issues. Since student publications are potentially powerful sources of persuasion, recognition of this important dual role must be made by all those directly involved in their construction and distribution, but particularly by editors. To both editor and reporter, the guiding light must be truth. Editors may express opinions editorially that are fallacious or even demeaning but they should be based in fact. Reporters, however, have no choice; they must never waver from the truth in presenting an unbiased and complete story.
5. Legal and Ethical Responsibility. Full recognition of prevailing legal and ethical standards of behavior must accompany creation and distribution of student publications. To hold otherwise is to negate the usefulness of the instruments themselves. Thus, every effort should be made to avoid unnecessary affronting of the collective good taste of the community. That is to say, editors, reporters, and photographers have at least an unspoken obligation to be sensitive to the prevailing legal and ethical issues and to take them into account carefully as they prepare their publications. Of course, it is recognized that both legal and ethical standards change over time and, in keeping with the criterion of timeliness mentioned above, the publications must be flexible enough to accommodate changing attitudes and regulations.

6. Balance. A student publication should, generally speaking, present a wide variety of viewpoints and its coverage of events should be broad. There should be a recognition of responsibility to ensure that differing philosophies have an opportunity to be made known to the readers. Without this characteristic, the publication soon loses its real value to the academic community.
7. Relevance. Primary emphasis in the coverage of news items should be on those events most directly related to students.
8. Reader Response. Feedback opportunities for readers should be provided so that answers to editorial opinions become a portion of the student newspaper's format.
9. News and Comment Distinction. A clear distinction should exist between news columns and editorial comment.
10. Frequency of Publication. The FLAMBEAU should be a daily publication. The size of its readership demands the service of a daily newspaper. A daily paper can best provide the immediacy of service to which the readership has grown accustomed.

C. ARTICLES OF INCORPORATION OF THE FLORIDA FLAMBEAU FOUNDATION, INC.

The undersigned subscribers to these Articles of Incorporation, each a natural person competent to contract, hereby associate themselves together to form a non-profit corporation under the provisions of Chapter 617, Florida Statutes.

ARTICLE I.  
NAME

The name of this corporation is: THE FLORIDA FLAMBEAU FOUNDATION, INC.

ARTICLE II.  
PURPOSE

The purposes of this corporation shall be:

(a) to edit, print, publish, sell and distribute at Florida State University, a student newspaper, which shall be known as "THE FLORIDA FLAMBEAU" hereinafter referred to as "THE FLAMBEAU" and such other student publications as the members of the corporation shall determine desirable.

(b) to contract for the printing and publishing of its publications; to purchase, acquire, apply for, register, secure, hold, own or sell copyrights, trademarks, tradenames and distinctive marks; to purchase or otherwise acquire, own or hold real and personal property of every kind and description suitable, necessary, useful, or advisable in connection with any of the purposes of the corporation, and to sell, assign, convey, transfer, lease, mortgage, pledge, exchange, or otherwise dispose of any such property and to make and enter into all contracts, agreements and obligations in any way necessary, useful or advisable to the effectuation of the purposes of the corporation.

(c) to engage in any activity of a non-profit corporation permitted under the Laws of the United States and of Florida.

(d) the corporation is organized solely for educational and literary purposes and in furtherance of those purposes will the corporation carry out the activity set forth in these Articles, and the corporation shall not conduct or carry on any activity not permitted to be conducted or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170 (c) (2) of such code and regulations as they now exist or as they may hereafter be amended.

ARTICLE III.  
MEMBERSHIP

The membership of the corporation shall consist of the members of the Board of Directors. The business and affairs of the corporation shall be managed by a Board of Directors consisting of not less than five (5) nor

more than fifteen (15) members, the exact number to be fixed in the By-Laws of the corporation, and unless and until otherwise provided in the By-Laws, the Board of Directors shall consist of seven (7) members. The Board of Directors, unless and until otherwise provided in the By-Laws, shall be divided into three (3) categories (classes) as follows:

(a) CATEGORY (CLASS) A. Four members who are registered students in residence at the Tallahassee campus of Florida State University, shall be selected in accordance with the provisions of the Constitution of the Florida State University Senate. This selection shall occur by means of the regularly held student elections sponsored by the Florida State University Senate. The initial members in Class A will consist of the three present student members of the Student Publications Policy Board. They shall continue as directors and members of the corporation until the next regularly held student election pursuant to the provisions of the Student Senate Constitution.

(b) CATEGORY (CLASS) B. Two members, who are members of the regular faculty of Florida State University, shall be selected pursuant to the Constitution of the University Senate, and such selection shall be made by means of the regular election procedure of the University Senate. The initial members and directors, who are members of the regular faculty of Florida State University, shall be the current faculty members of the Student Publications Policy Board who shall continue to hold remaining members and directors until the next regularly held election pursuant to the Constitution of the University Senate.

(c) CATEGORY (CLASS) C. One member who is a resident of Leon County, Florida who shall be selected by the President of the Florida State University, or a person under his authority, with the advice and consent of the other members of the Board of Directors of this corporation. Terms of this member and director shall be for a period of three (3) years from the date of his appointment or until his resignation.

#### ARTICLE IV. TERM OF EXISTENCE

This corporation shall exist perpetually.

#### ARTICLE V. SUBSCRIBERS

The names and addresses of the subscribers to this corporation are as follows:

#### ARTICLE VI. OFFICERS

The officers of the corporation, who shall manage the affairs of the corporation, and who shall be elected \_\_\_\_\_

will include a President, Vice-President, Secretary and Treasurer. The initial officers of the corporation until the time of new election shall be:

President  
Vice-President  
Secretary  
Treasurer

#### ARTICLE VII. BOARD OF DIRECTORS

The Board of Directors shall consist of not less than five (5) nor more than fifteen (15) members, the exact number to be fixed in the By-laws of the corporation, and unless and until otherwise provided in the By-laws, the Board of Directors shall consist of seven (7) members. The names of the Board of Directors who are to manage all of the affairs of the corporation, until the first election or appointment under the Charter, are as follows:

#### ARTICLE VIII. BY-LAWS

A committee of the Board of Directors shall submit a draft of proposed By-laws. To become effective, these By-laws must be approved by a majority vote of a meeting of the members. These By-laws may be amended, altered or extended in the manner prescribed in the By-laws.

#### ARTICLE IX. AMENDMENTS

These Articles may be amended at a general meeting of the members of the corporation held pursuant to a notice being given to all the members that a resolution will be presented to the membership at such meeting to amend these Articles of Incorporation, such amendments may be adopted by a majority vote of the members present at such meeting, and the resolution as so adopted shall then be presented to the Secretary of State of the State of Florida for approval of such amendment to these Articles of Incorporation.

#### ARTICLE X. BENEFIT TO MEMBERS

No member, director or officer of this corporation shall receive any pecuniary benefit from it, except such compensation as may be allowed for services actually rendered. In the event of the dissolution of this corporation all of its property, real, personal and mixed, wherever situated, shall vest immediately and absolutely in the Trustees of Florida State University to be used as Financial Aid for students attending Florida State University, and none of the property shall inure to the benefit of any officer, director, or member of the corporation.

#### D. LEASE AGREEMENT

This lease agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents, a public corporation of the State of Florida acting for and on behalf of the Florida State University (hereinafter called the lessor) and The Florida Flambeau Foundation, Inc., a non-profit corporation incorporated under the provisions of Florida Statutes, Chapter 617 (hereinafter called the lessee).

#### WITNESSETH

That the lessor, for and in consideration of the covenants expressed in those other agreement between the parties executed the \_\_\_\_\_ day of \_\_\_\_\_, 1972, and those covenants and agreements hereinafter mentioned to be kept and performed by the lessee, has demised and leased to the lessee, for the term and under the conditions hereinafter set out, those certain premises in Tallahassee, Leon County, Florida, particularly described as follows:

That portion of the University Union Building on the Florida State University campus to include Rooms 302, 306, 308, 318, 324, 326, 328, 330, 332, 334, and 336, and the furnishings and equipment on the aforementioned demised premises as specifically described in Schedule A attached to this agreement and incorporated herein.

#### TERM

To have and to hold the above described premises for a term commencing on the \_\_\_\_\_ day of September, 1972 to and including the \_\_\_\_\_ day of September, 1973.

#### HEATING, AIR CONDITIONING AND JANITOR SERVICES

The lessor agrees to furnish to the lessee heating, air conditioning and janitor services for the leased premises during the term of the lease at the expense of the lessor, provided that lessor shall not be responsible for any interruption in such services necessary for maintenance, repair or replacement of equipment or resulting from an interruption in sources of power.

#### MAINTENANCE AND REPAIRS

The lessor shall provide for interior maintenance and repairs in accordance with generally accepted good practices, including repainting, maintenance of light fixtures, and other interior maintenance as may be necessary due to normal usage. The lessee shall, during the term of this lease, keep the interior of the demised premises and the equipment thereon in as good a state of repair as it is at the time of the commencement of the lease, reasonable wear and tear and unavoidable casualties excepted. The lessor shall maintain and keep in repair the exterior of the demised premises



during the term of this lease and shall be responsible for the replacement of all windows broken or damaged in the demised premises, except such breakage or damage caused to the exterior of the demised premises by the lessee, its officers, agents or employees.

#### UTILITIES

The lessor will promptly pay all gas, water, power and electric light rates or charges which may become payable during the term of this lease for the gas, water, and electricity used by the lessee on the premises. The lessee shall be responsible for all telephone charges for telephones installed on the demised premises and telephone service to the demised premises.

#### ALTERATIONS

The lessee shall make no alterations in or to the demised premises during the term of this lease except upon the prior written consent thereto of the lessor.

#### INJURY OR DAMAGE TO PROPERTY ON PREMISES

All property described within Schedule A [Schedule A is omitted] and located on the premises during the continuance of this lease shall be at the risk of the lessor, and except for any negligence of the lessee, the lessee shall not be liable to the lessor for any loss or damage to said property on the premises. All other property of any kind that may be on the premises during the continuance of this lease shall be at the sole risk of the lessee, and except for any negligence of the lessor, the lessor shall not be responsible to the lessee or any other person for any injury, loss or damage to any other property or to any person on the premises.

#### FIRE AND OTHER HAZARDS

In the event that the demised premises, or the major part thereof, are destroyed by fire, lightening, storm or other casualty, the lessor at its option may forthwith repair the damage to such demised premises at its own expense and cost. The lessor shall not be responsible to the lessee for any interruption in lessee's occupation of the premises on account of such loss or damage, should it be necessary for lessee's occupation of the premises to cease until necessary repairs to the demised premises may be completed. Should the premises be only partially destroyed, so that the major part thereof is useable by the lessee, then the lessee shall have the right to continue occupancy of the undamaged portion of the premises and to the extent damaged, the premises shall be restored by the lessor as speedily as is practicable.

#### EXPIRATION OF TERM

At the expiration of the term, the lessee will peaceably yield up to the lessor the demised premises in good and tenantable repair. It is understood and agreed between the parties that the lessee shall have the right to remove from the premises all personal property of the lessee and all fixtures or equipment placed or installed on the premises by the lessee, with the approval of the lessor, provided the lessee restores the premises to as good a state of repair as they were prior to the removal.

#### SUBLETTING AND ASSIGNMENT

The lessee shall have no right to sublet all or any part of the demised premises or to assign all or any part of the demised premises.

#### NOT CONSENT TO SUE

The provisions, terms or conditions of this lease shall not be construed as a consent of the State of Florida to be sued because of said leasehold.

#### WAIVER OF DEFAULTS

The waiver by the lessor of any breach of this lease by the lessee shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this lease.

#### RIGHT OF LESSOR TO INSPECT

The lessor, at all reasonable times, may enter into and upon the demised premises for the purpose of viewing the same and for the purpose of making any such repairs as they are required to make under the terms of this lease.

#### BREACH OF COVENANT

Except as provided in this lease, if the lessee shall neglect or fail to perform or observe any covenant herein contained, which on the lessee's part is to be performed, and such default shall continue for a period of fifteen (15) days after written notice thereof to the lessee from the lessor, then the lessor lawfully may, immediately, or at any time thereafter, and without further notice or demand, enter into and upon the demised premises or any part thereof and repossess the same and remove the lessee and its effects without being taken or deemed to be guilty of any manner of trespass and thereupon the lease agreement shall terminate.

#### TAXES AND INSURANCE

Lessor shall be responsible for all taxes and fire insurance premiums

on the demised premises. Lessor shall not be liable to carry fire insurance on the person or property of the lessee or any other person or property which may now or hereafter be placed in the demised premises by the lessee and shall not be liable for any public liability insurance on the person of the lessee or any other person on the demised premises.

#### AVAILABILITY OF FUNDS

The obligations of the lessor under this lease agreement and the agreements between the parties attached hereto as Exhibit 1 are subject to the availability of funds lawfully appropriated or approved annually for such purposes by the Legislature of the State of Florida.

#### USE OF THE PREMISES

The demised premises shall be used solely for those purposes covered by the agreements between the parties executed the \_\_\_\_ day of \_\_\_\_, 1972, and attached hereto as Exhibit 1. The lessee will not make or suffer any unlawful, improper or offensive use of the premises or any use or occupancy thereof contrary to the laws of the State of Florida or the ordinances of the City of Tallahassee, or the Rules and Regulations of the Board of Regents or The Florida State University, now or hereafter made.

#### RENEWAL

The parties may renew this lease for an additional one year upon terms and conditions to be decided upon in writing by the parties.

#### RIGHT TO TERMINATE

The lessee shall have the right to terminate, without penalty, this lease upon giving six (6) months written notice to the lessor by certified mail, return receipt requested.

#### NOTICES

All notices required to be served on the lessor shall be served by registered or certified mail, return receipt requested, to the Director of the University Union, Florida State University, Tallahassee, Florida, 32306, and all notices required to be served upon the lessee shall be served by registered or certified mail, return receipt requested, at the address of the lessee at \_\_\_\_\_.

#### DEFINITION OF TERMS

1. The terms "lease", "lease agreement" or "agreement" shall be inclusive of each other and shall also include any renewals, extensions or

modifications of this lease.

2. The terms "lessor", "lessee" shall include the successors and assigns of the parties hereto.

3. The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

#### ADDITIONAL TERMS

Any and all additional covenants or conditions appear in Schedule A and Exhibit 1 attached to this agreement and incorporated herein.

In witness whereof the parties hereto have hereunto executed this instrument for the purposes expressed, the day and year above shown.

WITNESSES:

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF FLORIDA STATE  
UNIVERSITY

BY \_\_\_\_\_

(CORPORATE SEAL)

FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

BY \_\_\_\_\_

(CORPORATE SEAL)

E. CONTRACT FOR PRINTING SERVICES AND PERSONNEL

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 1972, by and between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of Florida, (hereinafter referred to as the Foundation);

WITNESSETH:

WHEREAS, the University with approval of the Board of Regents approved a plan for the publication of the Florida Flambeau newspaper by an independent non-profit corporation, and

WHEREAS, The Florida Flambeau Foundation, Inc., has been organized and incorporated for the purpose of printing a newspaper to continue under the name of the Florida Flambeau, for general distribution to the students, faculty and staff of the University, and

WHEREAS, the University is willing and able to provide certain services to the Foundation in order to provide an orderly and business-like transition to the accomplishment of publication of the Florida Flambeau by the Foundation, and

WHEREAS, the Foundation has been unable to secure all necessary services and personnel in time to begin publication at the beginning of the academic year, to-wit: September 12, 1972,

NOW, THEREFORE, in consideration of the mutual obligations between the parties in this and other agreements of even date entered into between the parties the University agrees to provide pre-printing services and personnel to The Flambeau according to the following terms and conditions:

1. The University will provide the following pre-printing services to the Foundation as necessary to begin publications until October 8, 1972, unless terminated or extended by further written agreement of the parties. Pre-printing services shall be described as and include providing camera ready copy consisting of typeset copy composed on an office machine, together with line drawings and continuous-tone copy that is ready in all respects for photo mechanical reproduction. Camera ready copy will include a basic reproduction page consisting of oversized or undersized continuous-tone copy and/or line art. In most instances line art will be mortised or pasted into position on the basic reproduction page. Parapaqued dropout panels will be applied to the basic reproduction page in the proper scale by the lab. Some photographs, illustrations or parts thereof will be reversed and/or screened. Continuous-tone copy is to be screened and fitted by the printer into the windows of the negative created by parapaqued areas on the basic reproduction page. Any special art work required for make-up of ads will be performed as part of these services. Such services shall begin on September 7 and continue through October 8 and shall be provided to the extent provided by the University in publishing the Florida Flambeau during the academic year 1971-1972.

2. This Contract for Services is based upon the present equipment capabilities of the Florida State University Student Publications Lab. These equipment capabilities are described in Exhibit "A" attached hereto and made a part hereof by reference, and shall suffice to satisfy the requirements of this agreement.

3. In consideration of the services provided by the University under this agreement, the Foundation shall pay the University a contract price based upon a per-page cost as follows:

- (a). Twenty (20) pages .....\$17 per page
- (b). Twelve to Sixteen pages .....\$20 per page
- (c). Eight (8) pages .....\$25 per page

Per page price shall be based upon the average number of pages per day published during the term of this agreement.

4. Pre-printing services described in this agreement do not include duplicating services, photographic services, or xerox facilities or services.

5. The University's obligation to provide the foregoing pre-printing service is conditioned upon receipt from the Foundation of news copy and ad copy according to a deadline shown in Exhibit "B" which is attached hereto and made a part hereof by reference.

6. The University agrees to maintain the position of student publications business manager until and including October 5, 1972. Further, the University will maintain the position of student publications secretary until and including October 9, 1972. These employees will devote full time to the Foundation from the date hereof until the foregoing dates, or until the current employees terminate their employment with the University on their own initiative, whichever occurs sooner.

7. This agreement is dependent upon those agreements of even date executed by the parties hereto and shall cease prior to its own date of termination in the event of the cessation of the obligations under any of the referenced agreements.

8. The Foundation warrants that it has the right to use all materials submitted for pre-printing and expressly agrees to hold the University harmless from any and all claims of copyright, privacy or otherwise arising out of the printing or publication of such material.

WITNESSES:

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF THE FLORIDA STATE  
UNIVERSITY:

BY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_

BY: \_\_\_\_\_  
Its President

\_\_\_\_\_

BY: \_\_\_\_\_  
Its Corporate Secretary

Approved as to Form and Content:

BY: \_\_\_\_\_  
General Counsel,  
Florida Board of Education

(CORPORATE SEAL)

## EXHIBIT A

### EQUIPMENT CAPABILITIES

#### A. Pre-Print

1. Addressograph Striped Adhesive Wax Coater  
Supplement to paste-up copy, applies wax coating to back of copy for adhesion to work sheet.
2. Fotorite rapid processor
  - a) Develops strips of exposed film from headliner.
  - b) Develops film from phototypesetting equipment.
  - c) Develops photographic paper for reverse and positive ad copy.
3. Compugraphic 7200 Headliner  
Keyboard operated headliner creates typography for ads and newspaper headlines and other printed matter in 14-72 point. Accepts up to 12 characters per second in 14 point. (Speed decreases as point size increases.)
4. I.B.M. Selectric Recorders (2) Model V  
Records all copy input for printing matter on magnetic tape coded for desired composition format.
5. I.B.M. Selectric Composer MT/Reader
  - a) Reads pre-coded magnetic tape automatically and prints out desired format.
  - b) Specified output, 20 11 pica lines/minute, point sizes 6-12 point (only manually)
6. Varityper 720 Composing Machine
  - a) Sets copy with manual justification for ads and duplicating work.
7. Varityper 820 Headliner
  - a) Sets headlines and develops on 35 mm film.
  - b) This machine is used as a back-up for 7200 headliner.
8. Dual Image Keyboards, Compugraphic (2)  
Records all copy inputs for printing matter on paper tape coded for desired composition. This unit replaces I.B.M. Selectric recorders.
9. Compugraphic 4961 TL Phototypesetter
  - a) Available for paper tape for keyboard input.
  - b) Specified output 30, 11 pica lines/minute.
  - c) Type sizes 5 through 24 point automatically.
  - d) Leading 0 through 31 1/2 points in 1/2 point increments.
  - e) Automatic justification and hyphenation utilizing 18 units line measure for more uniform spacing of lines.
  - f) Maintenance by production lab personnel trained by Compugraphic.



## B. Duplicating

1. A.B. Dick 360 Press
  - a) Utilized in reproduction of all forms of printing matter from camera-ready copy. Printing up to 11" x 17" in size.
  - b) Capable of utilization of any printing colors.
2. Apeco Laminator  
Laminates printed matter primarily for paste-up preservation up to 11" in diameter.
3. A.B. Dick Ditto (Spirit 250 machine).  
Ditto duplication of sizes 8 1/2" x 11" and 8 1/2" x 14" only from stencil.
4. Gestetner Mimeo #360  
Duplication of printed matter from stencil of sizes 8 1/2" x 11" and 8 1/2" x 14" only. Utilizes black ink only.
5. Ape Lamp
  - a) Makes metal plate for offset printing.
  - b) Utilized in burning positive photographic paper in reproduction of ads.
  - c) Utilized in burning color keys for verification of halftone reproduction.
6. Nu-Ape Horizontal Camera
  - a) Converts all camera-ready copy into negative film form from 20-300%.
  - b) Converts all camera-ready copy into positive reproductions and transparencies form from 20-300% utilizing P.M.T. paper.
  - c) Utilizes film size up to 14" x 18".
  - d) This machine is utilized by both Duplicating and Pre-Print.
7. Xerox 3600
  - a) Xeroxes 8 1/2" x 11" and 8 1/2" x 14".
8. Beam Cutter  
Utilized in cutting all paper sizes.

## C. Photography

1. Has camera capability, utilizing 35mm, 2 1/4", and 4 x 5 graphic with light meters, strobes and other related photographic equipment.
2. Darkroom facilities for development of all black and white pictures taken.
3. Has capability of making prints for newspaper reproduction.

F. LICENSE AGREEMENT

This agreement made and entered into this \_\_\_\_\_ day of September, 1972, by and between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of the Florida State University (hereinafter referred to as the University) and the Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the Foundation).

WITNESSETH:

Whereas the University with approval of the Florida Board of Regents has approved a plan for the publication of the Florida Flambeau Newspaper by the Foundation, and,

Whereas the Foundation has been organized and incorporated for the purpose of printing the newspaper for general distribution to the students, faculty and staff of the University, and

Whereas it is the intent of the parties that the newspaper continue to exist and be published under the name "The Florida Flambeau," and

Whereas the Foundation is, therefore, desirous of using the name "The Florida Flambeau" as the name of the publication, and

Whereas the University is willing to grant an exclusive license to the Foundation to use the name "The Florida Flambeau" as the name of the aforementioned publication,

NOW THEREFORE the parties hereto agree as follows:

The University hereby grants to the Foundation an exclusive license to use the name "The Florida Flambeau" subject to the conditions expressed herein.

The use of the name "The Florida Flambeau" by the Foundation shall be consistent with those agreements entered into the \_\_\_\_\_ day of \_\_\_\_\_, 1972, between the parties to this agreement and attached hereto as Exhibit I and incorporated herein.

It is expressly agreed by the parties that the name "The Florida Flambeau" shall be used by the Foundation only on the newspaper published by the Foundation and distributed under the terms of the aforementioned agreements between the parties.

It is expressly agreed between the parties that the University retains ultimate rights to use the name "The Florida Flambeau" and that in the event the Foundation is dissolved, voluntarily or involuntarily, or in the event that the agreements between the parties executed this event date fail to be performed by the Foundation the right to the use of the name "The Florida Flambeau" will revert to the University.

This agreement and the rights contained herein shall not be assignable by the Foundation without the prior written consent of the University.

It is expressly agreed by and between the parties that the use of any other name, designation, or title previously used by the University in publishing any University or student publication shall be by separate written agreement of the parties to this agreement.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF FLORIDA STATE  
UNIVERSITY

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

(CORPORATE SEAL)

FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

ATTEST \_\_\_\_\_  
Its Secretary

(CORPORATE SEAL)

Approved as to Form and Content:

By:

\_\_\_\_\_  
General Counsel,  
Florida Board of Education

G. ASSIGNMENT OF ACCOUNT RECEIVABLES

THIS AGREEMENT, made and entered into this \_\_\_\_ day of September, 1972, by and between State of Florida, Department of Education, Division of Universities, Florida Board of Regents, acting for and on behalf of The Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter also referred to as the Foundation).

WITNESSETH:

WHEREAS, the University with approval of the Board of Regents approved a plan for the publication of the Florida Flambeau newspaper by an independent non-profit corporation, and

WHEREAS, the Florida Flambeau Foundation, Inc. has been organized and incorporated for the purpose of printing a newspaper to continue under the name of The Florida Flambeau, for general distribution to the students, faculty and staff of the University, and

WHEREAS, there are certain advertising accounts maintained by The Florida Flambeau newspaper, under the authority of the University and the Board of Regents, and

WHEREAS, certain of these accounts as shown in Exhibit A attached hereto and incorporated herein, were not fully paid by advertisers, creating accounts receivable to the newspaper, and

WHEREAS, the University and the Board of Regents have determined that it would be in the best interest of the University to support an independent corporation organized for educational and literary purposes, and for the purpose of publishing a newspaper of general circulation among the students, faculty and staff of the University,

NOW THEREFORE, in consideration of the agreement of the Foundation to distribute its newspaper at no cost to the students, faculty and staff of the University through August 31, 1973, and in consideration of the agreement of the Foundation to provide educational and literary experiences for students of the University and other members of the University community, the Board of Regents and the University agree hereby to assign all accounts receivable listed in Exhibit A attached hereto and incorporated herein, accrued or accruing since July 29, 1972 to the credit of and maintained by the student newspaper, The Florida Flambeau, and now held by the University or collectable by the University or the Board of Regents to The Florida Flambeau Foundation, Inc., with all rights of collection, compromise and settlement of those accounts receivable and further assign all rights of the University or the Board of Regents under any advertising agreements which were formerly entered into between the student newspaper, The Florida Flambeau and its advertisers.

Should the Foundation be dissolved voluntarily or involuntarily, all rights hereunder remaining in the Foundation shall revert to the University.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING  
FOR AND ON BEHALF OF THE FLORIDA  
STATE UNIVERSITY:

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its President  
\_\_\_\_\_  
Its Corporate Secretary

(CORPORATE SEAL)

Approved as to Form and Content

By: \_\_\_\_\_  
General Counsel,  
Florida Board of Education

Editor's Note - Exhibit "A" is omitted.

#### H. CONTRACT FOR PURCHASE AND SALE OF ADVERTISING

THIS AGREEMENT, made and entered into this \_\_\_\_ day of September, 1972, by and between The State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of The Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the Foundation).

#### WITNESSETH:

WHEREAS, the University has determined that it would be in the best interest of the University to support and to obtain advertising in a newspaper of general circulation among the University's student body, faculty, and staff, and

WHEREAS, the Foundation has been organized and established for the purposes of printing such a newspaper under a plan approved by the University and the Board of Regents;

NOW THEREFORE, in consideration of the mutual covenants and obligations of the parties hereto, the University agrees to purchase and the Foundation agrees to provide advertising upon the following terms and conditions:

1. The term of this contract shall be for one (1) year from September 11, 1972, through September 10, 1973.

2. The University agrees to purchase four (4) full pages, 320 column inches, of advertising or news space per week for thirty-two (32) weeks, or the equivalent, at an annual cost and total contract price of Twenty Thousand Four Hundred, Eighty and 00/100 (\$20,480.00) Dollars. It is agreed between the parties that this advertising, or its equivalent, shall be based on unit prices derived as follows:

- (a) 80 column inches per page x \$2.00 per column inches — \$160.00 per page.
- (b) \$160.00 per page x 4 pages per week — \$640.00 per week.
- (c) \$640.00 per week x 32 weeks — \$20,480.00

It is agreed by the parties that the basic unit price for this advertising and news shall be \$2.00 per column inch.

3. The Foundation agrees to supply to the University four pages, 320 column inches, during each week of this agreement and to include the supplying of at least 80 column inches per day unless otherwise agreed to by the parties for advertising and news submitted by the University.

4. Advertising and news as discussed herein shall be defined to include all advertising or noticing of events, functions, meetings, or other occasions at the University, articles or stories related to any University activity, function, event, or other item of interest to the general University community, and any other material, or any other article, story, or description of, about, or concerning any matter of interest to the University community

All advertising and news material shall be as composed and selected by the University except that it is reserved to the Foundation to use good faith and reasonable discretion in layout of copy. This right reserved to the Foundation shall not extend to the Foundation the right to edit or abridge material submitted and in any event the University shall be vested with the sole right to editorially change any material submitted by the University. The parties shall exercise good faith in completing any necessary changes prior to accepted deadlines for the submission of copy.

The University shall be subject to those deadlines extended to other advertisers in the Florida Flambeau for submission of advertising and news under this agreement.

5. The parties agree that the obligation of the University is conditioned upon the publication of the Florida Flambeau by the Foundation for at least thirty-two (32) weeks or 160 issues within the period covered by this agreement. It is further agreed that the obligations of the University are conditioned upon the good faith adherence by the Foundation to the standards of quality as accepted by the publications corporation which is attached hereto and made a part hereof by reference as Exhibit "A", and compliance by the Foundation with those conditions of the lease agreement and publication agreement executed by the parties this even date.

6. This agreement and the obligations of the University thereunder are subject to the availability of funds lawfully appropriated or approved for the purposes herein stated.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF THE FLORIDA STATE  
UNIVERSITY:

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its President

Its Corporate Secretary

## I. ADVANCE PAYMENT REQUEST

The following are estimates made by the Corporation for expenses to cover the first two weeks of their existence.

### SALARIES

Flambeau	\$ 900.00	
Advertising	1080.00	(Manager-\$120 + 2% gross-estimated \$8,000 brings him to \$280 - salesmen = \$800.00)
Chairman of Board	40.00	
Business Office	125.00	(Carolyn Jones' salary)
Sub-Total	\$ 2145.00	
PRE-PRINT	\$ 680.00	(Based on 40 pgs. at \$17.00/pg. from FSU)
Sub-Total	\$ 680.00	

### PRINTING

Delivery	\$ 12.00	
Halftones @ \$2 ea.	60.00	(30 halftones)
Spot Color	60.00	(2 pages)
Base cost 40 pgs.	930.00	
Sub-Total	\$ 1062.00	

### GENERAL OPERATING EXPENSES

Telephone - 2 weeks; \$65.00	
+ \$90.00 service fee to have 6 phone numbers changed from 4810 to 4620	\$ 155.00
Long Distance	50.00
Subscriptions and Dues	25.00
Xerox	20.00
Photography (30 pictures at \$6.00 each)	180.00
Accounting Service (providing FSU Admn. pays the \$200 installation set-up fee)	100.00
Travel	0.00
Postage	32.00
Supplies (could be higher based on new forms required to be printed)	124.00
Sub-Total	\$ 686.00

The total for salaries, pre-print, printing, and general operating expenses is . . . . . \$ 4753.00



## Chapter Five

### Case Study: The University of Florida

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A. PLAN FOR INDEPENDENCE

To: President

From: Ad Hoc Committee for an Independent Student Newspaper

Date: January 4, 1973

Herein is presented a plan for the independent operation of a student newspaper to serve the University of Florida community with a regular source of periodic communications. The plan represents the unanimous decision of the individuals sitting as an ad hoc committee and is predicated on several general considerations as follows:

1. Any newspaper to be truly independent must be accountable only to itself financially and must be responsible to its readers by their acceptance or rejection of it as a physical entity; hence, the newspaper cannot accept any form of subsidy from the community it seeks to serve and expect to remain free from controls of that community and it cannot receive funds from its readers except those funds which each individual reader of his own volition chooses to give it.

Result: It is recommended that after February 1, 1973, the independent paper will receive no funds or other support from the University, except for the purchase of advertising, and support as specified herein during the transition period ending August 31, 1973. No further allocation of activity fees should be made to the existing paper or the independent successor after fall quarter 1972.

2. All institutions are not only identified by what they actually are, but also by what they are believed to be as a result of their heritage and relationship to other institutions; hence, a newspaper as an institution cannot be truly independent in the public mind unless it divests itself of those things which reflect on its heritage and its relationships.

Result: The name of the independent newspaper must include wording in its display that reflects its independence from the institution with which it was long associated, and its physical offices must be distinctively separated from those of the institution to which it was formerly attached. It must contain, in each issue, a statement disassociating itself from that institution.

3. Because of the nature of its peculiar mission, and independent student newspaper serving a university community would best be operated by a non-profit corporation.
4. Because of the difficulties of capitalizing a nonprofit corporation, and because of the benefits resulting to the University community by having circulated a periodic organ of communications, the University should assist in creating a climate in which the corporation can raise its necessary capitalization.

- Result: A. The University should, using Student Publication Reserves, pay salaries of full-time employees of student publications agreed upon between the University and the corporation through June 30, 1973, the sums so paid to be a credit to the University for communications space in the independent newspaper. If any of the present employees of the Board of Student Publication are not retained by the corporation, the University should attempt to find other employment for them in the fashion as for other employees whose jobs have been abolished.
- B. Inventory on hand, as of January 31, 1973, shall be paid for by the corporation in the form of communications space.
- C. In return for the corporation's publication and free distribution of the student newspaper on campus through the summer quarter 1973, the University will:
- (1) Lease to the corporation until August 31, 1973 all equipment owned by the University now in use by the Alligator at a value agreed upon by the University and the corporation, and approved by the appropriate state agency.
  - (2) Lease to the corporation the space in the J. Wayne Reitz Union presently occupied by the Alligator for the period February 1, 1973 to August 31, 1973 under terms and conditions to be agreed upon by the University and the corporation and approved by the appropriate state agency.

The corporation must agree to publish the newspaper at least three times per week in the winter and spring quarters and at least once a week in the summer quarter, during the time in which classes are being held at the University.

- D. Current student publications contracts shall be assigned to the corporation with the corporation assuming responsibility for meeting the University obligation thereof.
- E. Accounts receivable for advertising or other services incurred through January 31, 1973 should be assigned to the corporation as payment for communications space to be furnished by the corporation to the University.
5. It is agreed that a nonprofit corporate entity is a proper owner and operator of the independent paper. Because of the support afforded the proposed entity in the transitional period, the corporate charter must provide that the University of Florida become the owner of the assets of the corporation should the corporation at any time cease to publish a newspaper serving the campus community as provided for in this plan.
6. Because the principal mission of an independent student newspaper will be to propagate information and opinion to students, because the success

of an independent newspaper will depend mainly on those in the day-to-day operation of the newspaper and because editorial freedom must be maintained, the board of directors should have the following characteristics: (1) a majority of its members should be students; (2) a majority of its members should be engaged in the day-to-day operation of the newspaper; and (3) a favorable balance must be maintained between participants engaged in editorial pursuits and those engaged in business pursuits.

Result: The board is to be composed of the following as proposed by the corporation principals who have agreed to this plan:

General manager of the newspaper  
Assistant general manager in charge of advertising  
Editor  
Managing Editor  
Student Business Manager  
Graduate student with journalistic experience or education  
A person from outside the corporation engaged in full-time journalistic pursuits

7. The corporation must agree to:
  - A. Publish a newspaper through August 31, 1973 and distribute it free at least three times per week in winter and spring quarters and at least once a week in the summer quarter during the time in which classes are being held at the University. The distribution will be at drop points agreed upon by the University and the corporation. The newspaper is to contain information, news and comment of particular interest to members of the University community and notice of events occurring on the University campus.
  - B. Accept and publish at regular advertising rates plus actual cost of composition in format designed by the University such copy for the benefit of student communications as furnished by the University, not to exceed eight pages in one week, the cost thereof to be offset against the amount due the University as provided herein in paragraphs 4 A, B. and E.
  - C. Use good business practices and responsible diligent collection efforts of the accounts receivable assigned to the corporation, and make monthly reports to the University of collections made, and amounts remaining due.
  - D. File with the University monthly a statement of income, expenses, and assets of the corporation until such time as the sums paid by the University for advertising have been consumed by the University. During this time the University Auditor shall have the right to examine the financial records maintained by the corporation.
8. To facilitate an orderly transfer of the student newspaper at the earliest possible time and to give sufficient time to the careful preparation of all documents affecting this transfer, University attorneys should be assigned to work with any attorney or attorneys of the nonprofit corporation at the earliest practicable date. Considerable documentation is

available and detailed plans of the nonprofit corporation are already on file with us and will be made available to University attorneys at their bidding.

AD HOC COMMITTEE FOR AN INDEPENDENT  
STUDENT NEWSPAPER

BY: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

B. STATEMENT BY PRESIDENT

At Press Conference on Student Publications

January 9, 1973

Much has been said and written in recent months about student publications and the Florida Alligator at the University of Florida. The Sunshine Law could not have been brighter on any other subject.

This report addresses itself specifically to the future operation of the independent successor to the Alligator. I shall be glad to answer questions about it, but first I want to give you some information separate from the plan, but brought into focus because of it.

The new corporation has been given the privilege of choosing those full-time employees of the Board of Student Publications whom they want to assist in the new publication. The University will continue to pay their salaries to June 30, 1973. It is estimated this will require from \$30,000 to \$35,000 from the Student Publications Reserve Account.

For those employees not employed by the independent paper, the University will attempt to find other employment for them in the same fashion as it does for other employees whose job have been abolished.

Publication of the year book, the Seminole, will be handled by some of the existing professional staff and the existing student staff of that publication and financed from Student Publication Reserves.

The \$1.30 previously allocated to student publications from the Activity Fee ended with the fall quarter. One dollar (\$1.00) of this sum will be reallocated on a student per capita basis to the colleges which have or which establish student councils or agencies for conduct of programs which will add to student academic enrichment and extracurricular experience. The criteria under which these programs and student councils function will be developed shortly by the Office of Student Affairs in cooperation with Student Government. This decision was reached through discussions with the Acting Vice President for Student Affairs, and the President of the Student Body.

Decision on reallocation of the remaining 30¢ will be made later, on recommendations by the Vice President for Student Affairs after consultation with Student Government and other campus agencies and units.

I repeat my thanks to the committee. I believe they have come up with a sound, workable plan. Its implementation calls for the new newspaper to be published completely free from any restraints by me or by the University Administration.

The University Attorney will assist the Ad Hoc Committee and those concerned with the independent corporation in settling all details and doing all things necessary to be done to enable the corporation to commence operations on February 1, 1973.

C. REMARKS BY PRESIDENT AT SPECIAL MEETING OF THE UNIVERSITY SENATE,  
JANUARY 22, 1973.

Ladies and Gentlemen of the Senate, this meeting was called to present to you, for discussion, the plan for independence of the Alligator, as proposed by the Ad Hoc Committee.

I gave my support to the plan before presenting it to you for these reasons:

First, I felt it absolutely essential that this matter come to this body in the posture of a well-developed plan which had my approval, rather than our having before you several different plans for discussion, or this body attempting to draft one on the floor.

It was the responsibility of the Planning Committee to receive and consider all proposals and views and they did this. Not only did that Committee consider your resolution, the points made in it, receive proposals from all who cared to offer them, consider the experience of other universities in matters such as this, consult with editors of newspapers across the state, held a public hearing at which all were invited to express their views. A number of persons did.

The charge to the Committee was to prepare a plan for independence of the Alligator. But the Committee properly did a great deal more. It dealt with the basic question of independence and freedom of the paper and whether this condition could exist with public subsidy and retain effective connection to this University. It dealt with the important question of whether the paper could survive financially, independent of public subsidy and in a location off-campus. And with the advice of counsel, it dealt with the questions of what support the University should and could legally give to an independent corporation in a transitional period.

I am certain, that had this Committee felt independence was neither desirable nor workable, it would have reported it and I would have had to accept that finding. But not only did the Committee in its work reach an independent conclusion that the best answer for the Alligator and the University was independence, but that it could succeed. The present editor of the paper and, as I understand it, some student leaders also reached the same conclusion.

There was a second reason for my approving the Planning Committee plan before presenting it to you. That Committee, understandably, could not finish its work and make the report by the original deadline of November 15th. However, it had hoped to do so before the end of the Fall Quarter. This, too, became impossible so the recommendations of that Committee were not submitted to me until January 5th.

And yet, the Committee says, and those with whom they worked, that the financial success of the paper depended upon the independent publication having as many months of advertising income in the winter and spring quarters as possible. The Committee, therefore, recommended the date of February 1 be the date for the change. Now, this date required that a number of important actions be taken immediately—plans be made by the proposed directors of the independent corporation and by the University to assist in that transition. Understandably, they could not be done without a go ahead

signal that was involved in approval by me and so I gave it.

The third reason for accepting the recommendation at that time is that it was consistent with the objectives sought in the position that I had already taken when the Senate passed its resolution and is therefore a reaffirmation of the best possible solution I could find with the advice and the careful study of experts in the matter. Also, because I was advised that in the course of the Committee study the student editor and others publicly expressed the view that they, too, had concluded that independence from the university, including independence from reliance on subsidy by the state through the activity fee, was the best answer for the Alligator.

Some have charged that I have shown ill will against the Alligator and that the plan to make it independent is punitive action on my part. These charges are unfounded. From the beginning of this controversy, which has extended on this last occasion for more than a year, my motivation and the objectives sought have been the same. It is, and has been, to either establish a method of insuring that the affairs of the paper are conducted under professional supervision and guidance consistent with the University's responsibility as an educational institution and as owner and publisher, or to make the paper truly independent, relieving it of any control by or interference from the University, and relieving the University of all responsibility and accountability for it.

The principal result and advantage of independence for the Alligator, and I think one of the most significant reasons militating for it, is to excise from this University life a focal point for infectious discord and conflict between the University Administration and the student press, and particularly its editor—a situation which is inherent in the Board of Regents regulation which makes the University the owner and the president the publisher of student publications in the face of the Attorney General's opinion which in effect says that, while it's all right to make the University president the publisher, he cannot exercise any of the rights of publisher except for a violation of law—and that after the fact. And this, coupled with the understandable demands of student editors from interference or threat of interference by the University makes it clear that independence has to be the answer. Forget all the legal niceties involved, the opinions, it ought to be apparent that a search for accord, the removal of a cause of conflict that common sense says that the inconsistent, unworkable arrangement we now have should not be continued if there is a way to solve it without damaging the right of student and others to voice their views, and without sacrificing the other advantages which come from having a campus paper.

What most forget is that the conflict between the student editors and this University Administration is not a new thing. While the circumstances have changed, I am told it has been a recurring affair almost every year since the World War II days and even before that, although there was in effect then an editor-publisher plan, as I understand it, for this University.

Others will speak on the long range history of conflict, the studies that have been made, the recommendations that have been made, and the inaction that's followed in attempting to reach any solution. Let me recount to you, if I may, the history of events since October 1971 when the then student



editor published information in violation of a presumptively valid state law and in violation of Board of Student Publications regulations, after being requested not to do so, first by the Vice President for Student Affairs and ultimately by me. You recall that the editor was not removed. Rather, because of a pertinent federal court decision, I asked the Attorney General for an opinion clarifying the University president's role under the Board of Regents regulations which make him publisher. About the same time, in November, 1971, the Board of Student Publications, understanding the problems appointed a committee to study the future of the Alligator. In April, the Attorney General rendered the opinion I've mentioned. In May, the Board of Student Publications filed its report. No action was taken upon it. Then the nine university presidents asked the Board of Regents to amend its regulations to relieve them of the untenable situation in which they were put. The Board of Regents appointed a committee to study the matter and held a public hearing—many from this University appeared and spoke. The Board of Regent's committee reported at the July meeting but its report was not adopted.

Then, at the suggestion of the then chairman of the Board of Student Publications, a meeting was held; there were some 30 persons there, in my office—members of the Board of Student Publications, student leaders, the editor of the local paper, and others—all to sit and discuss what ought to be done to solve the problem. We took the Board of Student Publication's study as a point of beginning. It outlined six possible ways to go. I asked all at that meeting to make their recommendations with any proposals they were willing to give and come back five days later on August 2. Understandably, that is a short period of time. The Board of Student Publications voted that it would make no recommendation but urged another six months for study.

At this time, depending on information upon which I relied, that the independent student newspaper could not make it financially, I proposed to the Board of Regents that we put into effect at this University the same plan that is in effect at four others of the state universities—that is, an editor-publisher plan under which the paper would be operated by a professional but produced entirely by student, and for those students, the right to continue with their investigative reporting and criticism of the University and me as had been the custom. The Board of Regents did not accept that proposal of mine nor did it change its policy. In the meeting, the Board asked me not to change the method of operation of the Alligator here but to continue. However, at the October meeting of the Board of Regents, I explained the plan which had been prepared in which we would seek independence here, as I explained it to this body in September and told you that I was taking it to the Board of Regents. The Board then rescinded its previous action and adopted the following motion:

"That the actions of the President be approved, and that the President be authorized to conduct such experiments as he may determine."

Following that, the new Board recommended by the existing Board of Student Publications was appointed. And that board of 11 persons, I believe most were appointed by persons other than the President, that group could not

seat itself for a variety of reasons, which we need not deal with.

Then on the recommendation the the Vice President, four of those appointed by others to that Board that couldn't seat itself, and Mr. \_\_\_\_\_ of the Business Office who had been appointed to that Board by me, were asked to serve as a committee to consider the matter and draft a proposal by November 15 for independence. That Board, and they can speak for themselves, did so without any interference from me. I believe you know the rest of the story.

I have repeatedly said and I say to you again that I do not want to be the publisher of Student Publications; I do not want to in any way exercise any responsibility over it or to interfere with the freedom of that publication. I think that the facts are known, and my position. To analyze carefully I think you will find that I am perhaps more in favor of true freedom of the press than some who advocate it in other ways. I would say to you again, as professional societies have found, that what is involved here is not a freedom of the press classification. Another thing I think I must say to you. I've never on any occasion, in the more than five years since I have been here, attempted to exercise authority over the Board of Student Publications, to whom that authority as publisher has been delegated, or over the Vice President for Student Affairs, to whom that Board reports; and only in the Sachs case have I requested an editor not to publish material and that was because it violated the law.

I have criticized the Alligator on occasion, as I have other papers, and I hope the press is not above this. However, the unfortunate result is that when I criticize the Alligator, or any member of the Administration does, it is taken to be a threat or interference with the freedom and, again, the focal point of infectious discord and conflict exacerbates and becomes a running sore.

I say to you again that there is no reason for the administration of the University or the student editors, as they come and go, to be in this intolerable situation that has built into the conflict that always is a problem.

D. IMPLEMENTATION PLAN

January 24, 1973

Responsibility for operations and administration for student publications which have been assigned to the Vice President for Student Affairs by the President will be further delegated as follows:

- A) The Board of Student Publications which was appointed by the President for Academic Year 1972-73 will be relieved of its responsibilities effective January 29, 1973.
- B) Responsibilities for student publications currently charged to the Board of Student Publications are reassigned to the Director of the Union, effective January 29, 1973.
- C) The Acting Director of Student Publications shall be responsible to the Director of the Union for all functions of the Student Publications office which pertain to the publication of the Seminole and the completion of arrangements to terminate support for the Florida Alligator in accordance with approved contracts.
- D) The General Manager, Student Affairs Coordinator, shall be responsible to the Director of the Union for personnel administration and all other functions performed by the Student Publications staff in support of the Florida Alligator and/or the Independent Florida Alligator, Inc., throughout the period required by contractual arrangements.
- E) The Vice President for Administrative Affairs has directed the office of the University Controller to provide audit assistance required to:
  - 1) enable the close-out of financial operations and services provided to the Florida Alligator, effective January 31, 1973; and
  - 2) to complete the inventory and transfer of consumable supplies and accountability for facilities and equipment provided to the independent newspaper corporation by the Office of Student Publications during the transition period provided in contractual agreements.
- F) The Director of the Union is requested to provide the Vice President for Student Affairs with regular reports on the operations in support of the Seminole and of the independent newspaper corporation, to include recommendations as appropriate.

E. ARTICLES OF INCORPORATION OF CAMPUS COMMUNICATIONS, INC.

(A Corporation Not for Profit)

ARTICLE I - NAME

The name of this nonprofit corporation shall be Campus Communications, Inc. Its principal office shall be in the City of Gainesville, County of Alachua, State of Florida. Its initial mailing address is Post Office Box 13266, University Station, Gainesville, Florida 32601.

ARTICLE II - PURPOSES

Section 1. The business and purposes of this organization shall be to bring together those persons interested in the preparation and publishing of a newspaper, daily or otherwise, to be published in the interests of the students, faculty, and staff of the University of Florida at Gainesville, Florida.

Section 2. This corporation's major function will be to publish, daily or otherwise, a newspaper containing news of the student, faculty, and staff of the University of Florida. This newspaper shall be called The Independent Florida Alligator and shall be identified in its flag and masthead as being published independently of the administration and management of the University of Florida; specifically, the phraseology to be used in the masthead after the name of the newspaper is the following: "Published by Campus Communications, Inc., Gainesville, Florida, not associated with the University of Florida."

ARTICLE III - QUALIFICATIONS OF MEMBERS

The members of this corporation shall be the following: \_\_\_\_\_

and such other persons as may from time to time be elected to membership by the members of the corporation. The corporation shall have one class of membership. The qualifications, rights, and method of selection of members of this class shall be as provided in the By-Laws.

ARTICLE IV - PERIOD OF EXISTENCE

The period of existence of this corporation shall be perpetual.

ARTICLE V - SUBSCRIBERS

The names and residences of the subscribers and incorporators are as follows:

## ARTICLE VI - MANAGEMENT OF CORPORATION

Section 1. The affairs and business of this corporation shall be conducted and managed by the Board of Directors of the corporation.

Section 2. The officers of the corporation shall be a chairman, a vice chairman, and a secretary, who shall be selected from among the Board of Directors.

Section 3. The duties of the Board of Directors shall be to publish The Independent Florida Alligator, to hire the general manager and editor of said newspaper, and to establish the general policies for the conduct of business.

Section 4. The number of directors shall be not less than three and initially shall be seven. A majority of one of the Board of Directors at any time shall be selected from among the undergraduate and graduate student body of the University of Florida. As an example, if there are three directors, two shall be from said described class; if there are five directors, three shall be from said described class; if there are seven directors, four shall be from said described class. "Student" is herein defined as full time student as defined by the University of Florida, and as such definition by the university may from time to time change.

Section 5. The names and addresses of those persons who are to serve as directors of this corporation until succeeded as provided herein or in the By-Laws, and the classification of each (student or nonstudent) are as follows:

Section 6. The members of the Board of Directors shall include the general manager, assistant general manager, student business manager, student editor, student managing editor, a professional journalist, and a student or graduate student with a background in journalism who is not employed by this corporation. Board members shall be elected by majority vote of the board.

Section 7. The Board of Directors shall meet annually and as otherwise established from time to time in the By-Laws.

## ARTICLE VII - BY-LAWS

Section 1. The Board of Directors may provide for such By-laws for the conduct of this corporation's business and the carrying out of its purposes as may be deemed necessary from time to time.

Section 2. Upon proper notice to all members, the By-laws may be amended, altered, or rescinded by a majority of the Board of Directors (that is, a majority of the total number of directors, whether or not they are present) at any regular meeting, or any special meeting called for that purpose.

## ARTICLE VIII - CHARTER AMENDMENTS

These articles of incorporation may be amended at any regular meeting of the membership of the Board of Directors or at any special meeting called with notice for that purpose, by a majority of the total number of members of the Board of Directors, whether or not they are all present at the meeting. No proxy votes will be permitted for charter amendments. Article No. XI concerning distribution of assets upon dissolution or cessation of publication may not be amended. The disclaimer hereinabove quoted following the name of the paper in the masthead may not be amended.

## ARTICLE IX - NONPROFIT STATUS

This corporation shall not have or issue shares of stock. It shall pay no dividends or pecuniary profits whatever to its organizers or managers; it may employ at a salary as employees of the corporation those persons who also occupy positions as officers and directors.

## ARTICLE X - OFFICERS

Section 1. The names of the officers who are to serve until the first election are \_\_\_\_\_, chairman; \_\_\_\_\_, Vice Chairman; and \_\_\_\_\_, Secretary.

Section 2. Election of officers shall be in accordance with the requirements stated in the By-laws.

## ARTICLE XI - DISTRIBUTION OF ASSETS UPON DISSOLUTION OR CESSATION OF PUBLICATION

Section 1. No person, firm, or corporation shall ever receive any dividends or profits from the undertaking of this corporation, and, upon dissolution of this corporation, all of its assets shall be distributed to University of Florida Foundation, Inc., for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the Dean of said college and the President of said university. None of the assets shall ever be distributed to any member, officer, or trustee of Campus Communications, Inc.

Section 2. In the event Campus Communications, Inc., shall cease to publish a newspaper, the assets of this corporation shall be distributed to University of Florida Foundation, Inc., for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the Dean of said college and the President of said university.

## ARTICLE XII - MEETINGS

Section 1. This corporation shall meet annually, at a time and place to be determined by the By-laws.

Section 2. The corporation may provide in its By-laws or otherwise for the holding of additional meetings and any special meetings, and shall provide notice of all such meetings.

Section 3. A majority of the members of this corporation shall constitute a quorum for the holding of any noticed meeting of the Board of Directors.

#### ARTICLE XIII - PROXY VOTES

Proxy voting shall be permitted, except where prohibited as hereinabove outlined, as to specific questions only. Blanket or general voting authority shall not be permitted.

#### ARTICLE XIV - AGENT

The name of the initial resident Agent is \_\_\_\_\_.

#### ARTICLE XV - SUBSCRIBERS

IN WITNESS WHEREOF, the undersigned subscribing incorporators have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 1973, for the purpose of forming this corporation not for profit under the laws of the State of Florida.

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

## F. AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1973 by and between Board of Regents of the State of Florida, acting for and on behalf of the University of Florida, hereinafter referred to as the university, and Campus Communications, Inc., a Florida nonprofit corporation, hereinafter referred to as the corporation,

### W I T N E S S E T H :

WHEREAS, the university, with approval of the Board of Regents, has approved and accepted a plan submitted to it for the publication of the newspaper heretofore known as The Florida Alligator by an independent, nonprofit corporation, and

WHEREAS, the corporation has been organized and incorporated for the purpose of publishing a newspaper under the name of The Independent Florida Alligator in accordance with the plan accepted by the university mentioned in the immediately preceding paragraph, which plan is incorporated in the memorandum dated January 4, 1973, to the President from Ad Hoc Committee for an Independent Student Newspaper, which is attached hereto and made a part hereof, marked Exhibit A, and

WHEREAS, it is the purpose of this agreement to detail the rights and duties of the parties to each other, in order to execute and put into operation the agreement the parties have reached as per Exhibit A, Items 4A, B, C(1) (2), D, E, 5, 6, 7A, B, and D, [none of the exhibits are included herein.]

NOW, THEREFORE, in consideration of the agreement of the corporation to distribute its newspaper at no cost to the students, faculty and staff of the university from February 1, 1973, through August 31, 1973, at least three times per week in winter and spring quarters, and at least one time per week in the summer quarter during the time in which classes are being held at the university, and in consideration of the corporation's publishing at regular advertising rates (the published open rate) plus actual cost of composition in format designed by the university such copy for the benefit of the university community as furnished by the university, not to exceed eight pages in one week, the university agrees to do the following as itemized hereinbelow, in consideration of which the corporation agrees to do what is set out hereinbelow.

1. The university agrees to pay the gross salary of the employees named in Exhibit B attached hereto [Exhibit B is not attached, nor are any of the other enumerated exhibits] and made a part hereof at the gross salary shown thereon from February 1, 1973, through June 30, 1973. In the event an employee resigns or is fired, the university agrees to pay to a replacement the same sum for the same period. The corporation recognizes that the said employees are bound to abide by the rules and regulations of the State of Florida that pertain to state employees or University of Florida employees, as well as University of Florida regulations pertaining to its employees.



A. The University recognizes its obligation to said employees for annual leave accrued through January 31, 1973, and such leave may be taken by said employees in accordance with established practices of the University of Florida.

2. The corporation will reimburse to the university in the form of copy published in the newspaper as per item 7B of Exhibit A an amount equal to the value of sums paid by the university for state health insurance for the employees as listed on Exhibit B and amounts for fringe benefits matching (F.B.M.) representing 4 per cent (4%) for pension fund and 5.85 per cent (5.85%) for the Employees' FICA as contained in the second column on Exhibit B attached hereto, which sum is included in the total gross salary amounts indicated on Exhibit B, for which amount of \$28,034.21 the corporation agrees to furnish and publish copy to the university in accordance with item 7B of Exhibit A. In the event the vacant position is filled, then such amounts as are paid for gross salary by the university shall be returned to the university by the corporation in the form of copy as per item 7B of Exhibit A.

3. The university agrees to transfer to the corporation as of January 31, 1973, the inventory listed on Exhibit C attached hereto and made a part hereof. The said value of inventory is \$7,157.91. The corporation agrees to publish copy in accordance with 7B to the value of said \$7,157.91.

4. The university does hereby lease to the corporation from February 1, 1973, through August 31, 1973, the following space in the Union at the University of Florida Room 330, 330A, 330B, 330C, 330D, 332, 333, 335, 337, 338, 339, 339A, 339B, 340, 365, 365A and B56, for a total of 3,550 square feet. The university shall provide to the corporation heating, air conditioning, electricity, and janitor service for the leased premises during the term of the lease at the expense of the university, providing that the university shall not be responsible for any interruption in such services necessary for maintenance, repair, or replacement of equipment or resulting from an interruption of sources of power. The corporation agrees that it will be responsible for all telephone charges for telephones installed on the subject premises and telephone service to the subject premises. The corporation shall, during the term of this lease, keep the interior of the subject premises in as good a state of repair as it is at the time of the commencement of the term of the lease, reasonable wear and tear excepted. At the expiration of the term of this lease, the corporation will peaceably yield up to the university the subject premises in good and tenantable repair. The corporation shall have no right to sublet all or any part of the subject premises or to assign all or any part of the subject premises. The provisions, terms, or conditions of this lease agreement shall not be construed as a consent of the State of Florida to be sued because of said leasehold. The university at all reasonable times may enter into and upon the subject premises for the purpose of viewing the same and for the purpose of making any such repairs as it deems necessary. The corporation shall use the subject premises solely for the purposes intended by this agreement between the parties, and the corporation will not make or suffer any unlawful improper, or offensive use of the premises or any use or occupancy at all contrary to the laws of the State of Florida or the ordinances of the City of Gainesville or Alachua County, or the rules and regulations of the Board

of Regents of the University of Florida now or hereafter made.

5. The university does hereby lease to the corporation from February 1, 1973, to August 31, 1973, the following equipment to be used by the corporation and returned to the university at the expiration of the term in its present condition, ordinary wear and tear excepted. Said equipment is itemized on Exhibit D attached hereto and made a part hereof. The corporation agrees to publish and distribute the newspaper at least three times per week in the winter and spring quarters and at least one time per week in the summer quarter during the time in which classes are being held at the university, all during the period of time from February 1, 1973 to August 31, 1973. Said newspaper will be distributed in bins furnished by the university at drop points on the campus as contained in Exhibit E, attached hereto and made a part hereof. The numbers on Exhibit E are estimates of the numbers of newspapers to be distributed at each point. The corporation agrees to maintain and keep neat the said bins and agrees to replace said bins as they wear out. The replacement bins will remain the property of the corporation. The university agrees to pay for the costs of the February 1 issue of the newspaper since these costs have been incurred prior to February 1, 1973. The current contracts such as Web Printers of Florida, Inc. and XEROX Corporation will be assigned to the corporation.

6. The university hereby designates the Director of Information Services as the person responsible for submitting university copy for publication in the "university page of record" to the corporation in accordance with item 7B of Exhibit A. The corporation agrees that it will not accept copy in accordance with item 7B from anyone other than the Director or his designee unless the university designates in writing additional persons or a substitute.

7. As an accounting device and procedure the corporation will issue bills to the university for the copy published so that the university may keep track of the amount it has used in order to determine the amount remaining to be used. Said bills will be sent to the Director of Information Services of the University of Florida.

8. Accounts receivable for advertising or other service incurred through January 31, 1973, are hereby transferred to the corporation. The amount of same will be determined by the University Auditor on his inspection of the books within thirty days from date. There is hereby allowed as a credit against said amount the sum of \$5,154.99, representing an allowance for bad debts. The responsibility to collect the accounts receivable is solely that of the corporation and the amount said corporation collects, whether it be more or less than the amount of the accounts receivable minus the above described allowance, is of no concern to the university, it being of benefit to the parties to fix in this contract a sum certain as an allowance for bad debts. The corporation will provide to the university the publication of copy in accordance with item 7B of Exhibit A in an amount equal to the total amount of accounts receivable less the sum allowed hereinabove for bad debts.

9. In connection with prepaid subscriptions the university will reimburse the corporation for the pro rata share of the prepaid subscriptions as of February 1, 1973, in the form of cash.

10. The corporation will acquire workmen's compensation and public liability insurance including insurance for libel as soon as possible.

11. The corporation hereby agrees that, in the event of its dissolution or in the event it ceases to publish a newspaper, it will distribute the assets of the corporation to the University of Florida Foundation, Inc. for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the dean of said college and the president of said university.

12. The university does hereby transfer to the corporation the good will of the newspaper heretofore published.

13. The corporation does hereby agree to use the following disclaimer after its name in the masthead and flag: published by Campus Communications, Inc., Gainesville, Florida, not associated with the University of Florida. The university does hereby grant to the corporation an exclusive license to use the name The Florida Alligator in the following form only: The Independent Florida Alligator, as the name of the newspaper and in no other manner, reserving however to the university the right to use the name The Florida Alligator in any manner it sees fit other than The Independent Florida Alligator. The license for the use of the name herein granted to the corporation is for such period of time as the corporation publishes a newspaper. Upon the cessation of publication of a newspaper, said license terminates and all rights in connection with said name The Florida Alligator revert to the university. Said license is not assignable or transferable by the corporation without the prior written consent of the university.

14. In the event of any claim for Workmen's Compensation for which the university becomes responsible as a result of accident or injury arising during the period between February 1, 1973, and August 31, 1973, in connection with the employees paid by the university as hereinabove, the corporation agrees to reimburse the university for costs incurred and to accomplish said purpose will carry Workmen's Compensation Insurance in order to indemnify and save harmless the university.

15. In connection with any Unemployment Compensation claims that the university becomes required to pay as a result of the employment between February 1, 1973, and August 31, 1973, in connection with the employment of employees hereinabove set out, the corporation does hereby agree to save harmless and indemnify the university and does therefore agree to reimburse the university for such amounts.

16. The physical possession of the newspaper clipping file and the photo file, which includes the art file, shall be delivered to the corporation; however, the university retains title to the same, and upon dissolution of the corporation or upon cessation of publication of a newspaper, said files are to be returned to the university intact. The university shall have the right to inspect these files at any time during normal business hours.

17. The university hereby agrees to transfer to the corporation subscription lists.

18. It has been estimated that the accounts receivable would be between 50 and 60 thousand dollars (\$50-60,000), the estimate therefore being \$55,000 in accounts receivable on which Exhibit A is predicated. The university agrees that, if the value of accounts receivable (after the computation of subtraction for the allowance for bad debts as per item 8 above) is less than \$55,000, the university, in order to meet its commitment of that level of support for the interim period, will make up the difference between such amount and \$55,000 in kind, which may include the payment of student salaries. If student salaries are paid by the university, sections 14 and 15 hereinabove will also apply to these employees. In the event accounts receivable are in excess of \$55,000 after the subtraction of the allowance for bad debts, the accounts receivable in such excess amount shall be returned to the university to collect for its own account.

19. The obligation of the corporation to the university in the form of providing copy in accordance with item 7B of Exhibit A shall continue until such time as it has returned to the university the total value as hereinabove itemized, of support provided by the university to the corporation, in the form of salaries to employees, inventory of consumables transferred, and total amount of accounts receivable transferred.

20. The corporation agrees to file with the university monthly a statement of income, expenses, and assets of the corporation until such time as the sums paid by the university for advertising have been consumed by the university. During this time the University Auditor shall have the right to examine the financial records maintained by the corporation.

21. This agreement is not assignable without the written consent of the parties.

22. This agreement may not be modified except in writing.

23. This agreement is the entire agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have signed, sealed, and delivered these presents this \_\_\_\_ day of \_\_\_\_\_, 1973.

WITNESSES:

CAMPUS COMMUNICATIONS, INC.  
A Florida Nonprofit Corporation

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BOARD OF REGENTS OF THE STATE OF FLORIDA,  
for and on behalf of the  
University of Florida

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
President, University of Florida  
under special authorization of  
the Board of Regents

## Chapter Six

### NONPROFIT STATUS

The planner should, at an early date, make a "Request for Technical Advice" of the local Exempt Organizations Department, Federal Internal Revenue Service office for a ruling on the applicability of Section 501 (c) (3) of the Internal Revenue Code.

Section 501 (c) (3) reads as follows:

"Corporations, and any community chest, fund or foundation, organized and created exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Following is the letter requesting tax-exempt status prepared by  
the Kentucky Kernel, of the University of Kentucky.

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March 14, 1972

Exempt Organizations Department  
District Director  
U.S. Internal Revenue Service  
Cincinnati, Ohio

Dear Sir:

Enclosed please find the application of The Kernel Press, Inc. for tax-exempt status as an educational and literary corporation. It is our belief that the enclosed forms and addenda provide enough explanation and support to assure our corporation's tax-exempt status, but I have provided below a short history of The Kernel Press, Inc.'s formation and operation in order to provide background information for your review. Additional explanation, as required in form 1023, follow in duplicate in the remainder of this letter.

The Kernel Press, Inc. is a non-profit corporation composed of students, faculty, and administrators at the University of Kentucky, the primary purpose of which is to publish The Kentucky Kernel, the University's independent student newspaper.

The move toward incorporation was made in October, 1971, after a six-month reorganization period which began the previous April. Students decided to incorporate The Kentucky Kernel when the University of Kentucky Board of Trustees voted to phase out a cash subsidy of approximately \$40,000 a year which had been used to aid in covering printing costs of the newspaper. That subsidy was cut in half for the 1971-72 school year, and was officially spent by The Kernel Press, Inc. as of Jan. 1, 1972.

As of this time The Kernel Press, Inc. has taken over the function of publishing The Kentucky Kernel from the University and bears complete financial responsibility for the newspaper. The board of directors of The Kernel Press, Inc. is composed of students, faculty, and administrators of the University of Kentucky, as well as one former employee of The Kentucky Kernel newspaper and one practicing journalist, who serves in a non-voting advisory capacity.

It is my strong belief that The Kentucky Kernel deserves tax-exempt status as an educational and literary corporation. Prior to its severance from University financial support, The Kernel had served the students and faculty of UK as the campus' only newspaper for over 57 years. Now that it is independent, it remains as the University's only newspaper, serving a student body of nearly 20,000 and over 5,000 faculty and administrators.

In addition, The Kentucky Kernel and The Kernel Press, Inc. provide a valuable training ground for future journalists. Our offices, located in the UK Journalism

Building, have turned out dozens of newsmen who have gone on to be recognized for exceptional performance in their journalistic careers--among them Mr. William Arthur, former editor of Look Magazine, Mr. Jim Hampton, news editor of The National Observer, and Mr. James Aussenbaugh, state editor of the Louisville Courier-Journal.

The Kernel Press, Inc. and The Kentucky Kernel are the primary managers of an accredited class in the Department of Journalism at UK. The course, called "practicum," gives students credit for writing stories and performing editing and layout jobs which are part of The Kernel's daily routine. For all practical purposes, The Kentucky Kernel provides the only experience on a newspaper that most students in the UK Department of Journalism receive while in school. Without The Kentucky Kernel, the UK Department of Journalism would not have a "laboratory" newspaper for its students and would lose accreditation under the rules of the American Council for Education in Journalism.

We believe these examples of The Kernel's past and present efforts substantiate our claim as an "educational" corporation. As part of our "literary" function, we keep our editorial and opposite-editorial pages open for comment from the entire student, faculty, and administrative body of the University of Kentucky. Any contributions to these pages are edited only for length.

But apart from these functions, we believe our newspaper provides an invaluable communications link between the University and its students. We serve as the main disseminator of information to the student body and can claim 95 percent readership among both faculty and students at UK, according to readership surveys.

I hope these facts will provide adequate background to help you in considering our application for tax-exempt status at UK. Should you desire any additional information, please call me at my office, (606) 257 - 1755, collect.

Thanking you for your help, I am,

Sincerely,



**EXEMPTION APPLICATION**

(To be made only by a principal officer of the organization claiming exemption)

To be filed in duplicate  
with the District Director  
for your District.

For use of organizations applying for exemption under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, which are organized and operated (or will operate) exclusively for one or more of the following purposes (check purpose(s)):

- ☐ Religious ☐ Charitable ☐ Scientific ☐ Testing for Public Safety  
☒ Educational ☐ For the prevention of cruelty to children or animals ☒ Literary

Every organization that claims to be exempt must furnish the information and data specified in duplicate. If any organization fails to submit the information and data required, this application will not be considered on its merits and the organization will be notified accordingly.

This application shall be open to public inspection in accordance with section 6104(a)(1) of the Internal Revenue Code. See separate instructions for Form 1023 to properly answer the questions below.

- 1a. Full name of organization  
**The Kernel Press, Inc.**
- 1b. Employer identification number  
**61-0719986**
2. Complete address (number, street, city or town, State and Postal ZIP code)  
**113 Journalism Bldg., University of Kentucky, Lexington, Kentucky 40506**
- 3a. Is the organization incorporated?  
☒ Yes ☐ No
- b. If "Yes," in which State and under which law (General corporation, not for profit, membership, educational, eleemosynary, etc.)? Cite statutory provisions.  
**The Kernel Press, Inc. was incorporated under Ky. Nonprofit Corporation Act (KRS Ch. 273)**
- 4a. If not incorporated, what is form of organization?  
**does not apply**
- b. Date incorporated or organized  
**10-4-71**
- c. Month and day on which the annual accounting period ends  
**May 31**
- 5a. Has organization filed Federal income tax return(s)? ☐ Yes ☒ No
- b. If "Yes," form number of return filed and Internal Revenue District where filed.  
**does not apply**
- c. Year(s) filed  
**does not apply**

6. After July 1, 1960, did the creator of your organization (if a trust), or a contributor to your organization, or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor, or a corporation controlled directly or indirectly by such creator or contributor, enter into any of the transactions (or activities) enumerated below? NOTE: If you have any knowledge or contemplation that you will be a party to any of the transactions (or activities) enumerated in 6a through 6f, check "planned" in the applicable block(s) and see instructions.

	Yes	No	Planned		Yes	No	Planned
a. Borrow any part of your income or corpus?		<input checked="" type="checkbox"/>		d. Purchase any securities or other property from you?		<input checked="" type="checkbox"/>	
b. Receive any compensation from you?		<input checked="" type="checkbox"/>		e. Sell any securities or other property to you?		<input checked="" type="checkbox"/>	
c. Have any part of your services made available to him?		<input checked="" type="checkbox"/>		f. Receive any of your income or corpus in any other transaction?		<input checked="" type="checkbox"/>	

7. Have you issued or do you plan to issue membership, stock, or other certificates evidencing voting power in the organization?

8a. Are you the outgrowth or continuation of any form of predecessor(s)?

b. Do you have capital stock issued and outstanding?

c. Have you made or do you plan to make any distribution of your property to shareholders or members?

d. Did you receive or do you expect to receive 10 percent or more of your assets from any organization, group of affiliated organizations (affiliated through stockholding, common ownership, or otherwise), any individual, or members of a family group (brother or sister whether whole or half blood, spouse, ancestor, or lineal descendant)?

e. Does any part or will any part of your receipts represent payment for services of any character rendered or to be rendered by you?

f. Are you now, have you ever been, or do you plan to be engaged in carrying on propaganda, or otherwise advocating or opposing pending or proposed legislation?

g. Do you participate or plan to participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office?

h. Have you made or do you plan to make any payments to members or shareholders for services rendered or to be rendered?

i. Does any part or do you plan to have any part of your net income inure to the benefit of any private shareholder or individual?

j. Are you now or are you planning to be affiliated in any manner with any organization(s)?

k. Do you hold or plan to hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation?

9. Has any State or any court (including a Court of Probate, Surrogate's Court, etc.) ever declared whether you were or were not organized and operated for charitable, etc., purposes? ☐ Yes ☒ No. If "Yes," attach copies in duplicate of pertinent administrative or judicial decisions.

**10. You must attach copies in duplicate of the following:**

- a. If incorporated, a copy of your articles of incorporation, or if not incorporated, a copy of your constitution, articles of association, declaration of trust, or other document whereby you were created setting forth your aims and purposes, a copy of all amendments thereto, and any changes presently proposed.
- b. A copy of your bylaws or other similar code of regulations, all amendments thereto, and any changes presently proposed.
- c. A complete statement of assets and liabilities as of the end of each annual accounting period (or as of the date of the filing of this application, if you were in existence for less than a year).
- d. A statement of receipts and expenditures for each annual accounting period of operation (or for the period for which you were in existence, if less than a year).
- e. A statement which clearly indicates what State statutes or court decisions govern the distribution of assets upon dissolution. (This statement may be omitted if your charter, certificate, or other instrument of organization makes provision for such distribution.)
- f. A brief statement of the specific purposes for which you were formed. (Do not quote from or make reference to your articles of incorporation, constitution, articles of association, declaration of trust, or other document whereby you were created for this question.)
- g. A statement explaining in detail each fund-raising activity and each business enterprise you have engaged in or plan to engage in, accompanied by copies of all agreements, if any, with other parties for the conduct of each fund-raising activity or business enterprise.
- h. A statement which describes in detail the nature of each of your activities which you have checked on page 1, activities which you sponsor, and proposed activities.
- i. A statement which explains fully any specific activities that you have engaged in or sponsored and which have been discontinued. Give dates of commencement and termination and the reasons for discontinuance.
- j. A statement which describes the purposes, other than in payment for services rendered or supplies furnished, for which your funds are expended or will be expended.
- k. A schedule indicating the name and position of each officer, director, trustee, etc., of the organization and the relationship, if any, by blood, marriage, adoption, or employment, of each such person to the creator of the organization (if a trust), to any person who has made a substantial contribution to the organization, or to a corporation controlled (by ownership of 50 percent or more of voting stock or 50 percent or more of value of all stock), directly or indirectly, by such creator or contributor. The schedule shall also indicate the time devoted to position and compensation (including salary and expense account allowance), if any, of each officer, director, trustee, etc., of the organization.
- l. A copy of each lease, if any, in which you are the lessee or lessor of property (real, personal, gas, oil, or mineral) or in which you own an interest under such lease, together with copies of all agreements with other parties for development of the property.

**SIGNATURE AND VERIFICATION**

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

3-14-72

Date

*Stephen Michael Weiss*

Signature of officer

Vice President

Title

GPO : 1971 O - 108-167

FORM 1023 (REV. 4-65)

\*Editorial comment as determined by the student editorial board sometimes deals with pending or proposed legislation and with candidates for public office and sometimes takes a stand with respect thereto.

March 14, 1972

Explanations to accompany application for tax-exempt status—Form 1023  
for the following sections:

- 8a. The Kernel Press, Inc. is incorporated primarily for publication of The Kentucky Kernel, which operated as the student newspaper of the University of Kentucky beginning in 1915. The Kernel Press, Inc. has, in effect, taken over the title of publisher from the University of Kentucky
- 8e. The Kentucky Kernel is financed almost totally from receipts for advertising sold to merchants in the Lexington, Ky. area and from advertising sales to national corporations.
- 8f.
- 8g. \*Editorial comment as determined by the student editorial board of the Kentucky Kernel sometimes deals with pending or proposed legislation and with candidates for public office, and sometimes takes a stand with respect thereto. Comment of this type does not constitute a substantial part of editorial comment of The Kentucky Kernel, and full opportunity to reply is made available to the general public. Editorials carried in the Kentucky Kernel are clearly marked as such.
- 8j. The Kernel Press, Inc. is indirectly affiliated with the Kentucky Kernel Press Club, a student organization registered on campus with the Dean of Students of the University of Kentucky. The purpose of the Press Club is to promote journalism education and to aid in publication of The Kentucky Kernel newspaper. All staff members of the Kentucky Kernel are members of the club. No dues are charged to members.
- 10f. Detailed attention is given to the formation of the Kernel Press, Inc. in the introductory letter to this application. The primary purpose for formation of the corporation was to assume publication of The Kentucky Kernel, and provide for dissolution of its assets in case of bankruptcy, in light of the severance between the Kernel and the University of Kentucky which was imposed by the UK Board of Trustees in April, 1971.
- 10g. The Kernel Press, Inc. has on occasion provided, without formal contract, minor printing services for student organizations on the campus of the University of Kentucky. Such services are performed strictly on a walk-in basis and revenues from them

are specially earmarked.

- 10i. The Kernel Press, Inc. has engaged in no activities which have been discontinued.
- 10j. The Kernel Press, Inc. has no plans to expend funds for any purposes other than for services rendered or for supplies furnished.
- 10k. No member of the board of directors of The Kernel Press, Inc. receives compensation for his services as a director. Directors devote approximately three hours per month aniece to meetings and committee-work related to their positions as directors of The Kernel Press, Inc.  
Three members of the board of directors of The Kernel Press, Inc. spend additional time on work related to The Kentucky Kernel and The Kernel Press, Inc. by virtue of jobs involving them with publication of The Kentucky Kernel newspaper. Their names, and the amount of time they spend per month, are indicated below with asterisks (\*).  
The board of directors of the Kernel Press, Inc. consists of:

first amendment. Because the Supreme Court has not directly confronted the issue, however, it would not be surprising to find that many state universities actually exercise a substantial degree of editorial control over student publications whether they may constitutionally do so or not. When such control exists in fact, it should be taken into consideration in determining control for vicarious liability purposes. Analysis may therefore focus on public universities that both do not in fact control and cannot constitutionally control the actions of student authors and editors leading to the publication of a libel. In regard to these universities, does the first amendment negate the earlier finding of agency and therefore vicarious liability?

The courts have never clearly indicated how complete the principal's domination must be under either the *Singer* text, consisting of the right to control the agent's physical movement, or the enterprise test, consisting of the right to make management and policy decisions. The application of *Singer* is uncertain because, although the university does not retain control over the editorial work, it still has the right to control many other details. Similarly, the result under the enterprise test cannot be precisely determined. The university no longer has the right to make managerial decisions in the area of editorial policy, which is most critical to libel; however, it retains the right to make other important policy decisions, for example, those concerning the newspaper's financial structure. Most importantly, the university surely always retains the right to determine whether to sponsor a student newspaper at all. In short, while the first amendment may negate the most important aspect of the control relationship between a university and its student newspaper, other aspects of the control relationship remain. Given the fluidity of the control tests, a court might properly reach whatever result it felt was just.

The reasons for imposing liability upon the university for a student newspaper's defamatory torts are founded upon the traditional justifications of vicarious liability. A fundamental consideration is the desire to compensate for the injury to the plaintiff's reputation. The plaintiff himself will usually be forced to absorb the loss unless the university provides compensation.<sup>128</sup> In addition, the university is likely to have the most experience in evaluating and insuring against the risks of a libel action.<sup>129</sup> It may also be able to self-insure or to lower the cost of libel insurance by purchasing it in a package covering all insurance needs.<sup>130</sup> Moreover, the university may spread the costs of insurance, or a libel judgment, over the student body through higher tuition.<sup>131</sup>

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128. See text accompanying note 82 *supra*.

129. See note 40 *supra*.

130. See notes 147-51 *infra* and accompanying text.

131. See note 40 *supra*.

The policy considerations against imposing vicarious liability arise from the application of the first amendment. When the university is constitutionally forbidden from exerting control over the newspaper it seems unfair to impose liability upon it: The university cannot take preventive action against the publication of the libel except in the most limited sense of closing the newspaper down.<sup>132</sup> A second major consideration is that the imposition of vicarious liability upon the university may ultimately be detrimental to the student press. If a university could be held vicariously liable even though virtually powerless to prevent the publication of libel, the consequences for student newspapers could be onerous. Concern for the burden of a libel action might cause the university to place limits upon or even to eliminate student newspapers. The essence of the controversy, then, can be reduced to one of balancing the importance of compensation against considerations of fairness to the university and the potential adverse effect on the student press. The plaintiff's interest in being compensated for the injury to his reputation should yield to the protection of the press and the facilitation of the free exchange of ideas.

Public universities that do not exercise editorial control over student publications should not be held vicariously liable for defamatory material appearing in those student publications. Vicarious liability should, however, be imposed generally upon both the public universities that in fact exercise editorial control and upon all private universities which, free of the first amendment limitation, have a right to control their student publications, whether it is exercised or not.

### B. Communication Liability

Communication liability is based on the peculiar nature of defamation. Neither libel nor slander are actionable unless they are communicated to others,<sup>133</sup> a process referred to as publication.<sup>134</sup> In view of the critical importance of publication, liability has been extended beyond the author to include those who communicated, or cooperated in communicating, defamatory statements.<sup>135</sup> Communication liability is a form of personal rather than vicarious liability. Some form of direct participation by the university in the publication of the libel is necessary. Arguably, the university becomes a coopera-

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132. However, its decision not to sponsor the student newspaper may not be based on its opposition to the editorial policy. *Joyner v. Whiting*, Civil No. 72-1630 (4th Cir., April 10, 1973). See notes 98-115 *supra* and accompanying text.

133. The communication need not be made to a mass audience. Communication of a libel to one other person has been deemed actionable. *Ostrowe v. Lee*, 256 N.Y. 36, 175 N.E. 505, 244 N.Y.S. 28 (1931).

134. 1 F. HARPER & F. JAMES, *supra* note 38, § 5.15 (1956).

135. *Grinnell v. Cable-Nelson Piano Co.*, 169 Mich. 183, 191, 135 N.W. 92, 95 (1912). See also *Youmans v. Smith*, 153 N.Y. 214, 218-19, 47 N.E. 265, 266 (1897).

tive participant in the publication of the libel whenever it aids the student newspaper by providing various forms of financial aid.<sup>136</sup>

Communication liability may be applicable where vicarious liability is not. For example, in *La Barge v. Daily Orange*,<sup>137</sup> a \$938,000 libel action was filed against Syracuse University, its unincorporated student newspaper, the author, editors, and financial advisor. Syracuse University moved for dismissal as to itself, arguing that the only basis for liability was *respondere superior*, and that the doctrine was unavailable since the master-servant relationship between the university and the student editors was absent.<sup>138</sup> The court rejected the contention that vicarious liability was the only appropriate theory, holding:

The label on the relationship—whether they are principal and agent, employer and employee or fellow actors—is immaterial. "He who furnishes the means of convenient circulation, knowing, or having reasonable cause to believe, that it is to be used for that purpose, if it is in fact so used, is guilty of aiding in the publication and becomes the instrument of the libeler."<sup>139</sup>

While the case was ultimately dismissed for failure to prosecute,<sup>140</sup> it indicates at least one court's willingness to adopt the theory of communication liability in a libel case involving a student newspaper.

However, several barriers may obstruct the development of communication liability as a viable theory in the university-student newspaper context. First, it is unclear how much participation is required to impose liability upon the university. At least where the newspaper is a forum protected by the first amendment, the university cannot control editorial policy and is reduced to the role of a passive supplier of services, much like an ordinary commercial supplier or a charitable donor. Second, while communication liability does not allow, in the absence of privilege, the defendant's good intentions or lack of negligence in publishing the libel to serve as a defense, this strictness has

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136. The informal survey conducted by the *Review* revealed that over ninety per cent of the student publications received some form of aid and assistance from their schools. See Appendix *infra* for a percentage breakdown of the form of assistance received.

137. Civil No. 70-6597 (N.Y. Sup. Ct., 5th Dist., April 8, 1972) (dismissed for failure to prosecute).

138. Brief for Syracuse University in support of Motion To Dismiss at 2-17, *La Barge v. Syracuse Univ.*

139. *La Barge v. Daily Orange*, Opinion of March 4, 1971, denying defendant's, Syracuse University, motion to dismiss at 6, quoting *Youmans v. Smith*, 153 N.Y. 214, 218-19, 47 N.E. 265, 266 (1897).

140. Subsequent to the denial of Syracuse University's motion to dismiss, the United States Supreme Court decided *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971). See text accompanying notes 27-30 *supra*. In light of this and plaintiff's failure to proceed with preliminary examinations, the suit was summarily dismissed. Renewed Motion To Dismiss by Syracuse University (April 8, 1972); letter from Attorneys for Syracuse University to *Michigan Law Review*, Nov. 21, 1972.

been relaxed for some secondary disseminators of libel. Those who are merely outlets for mass communication journals, and who really have little control over the editorial process, may avoid liability by proving that they did not know, and were not negligent in failing to discover, the libel contained in the journals.<sup>141</sup> Where the university is prohibited by the first amendment from the exercise of editorial control, perhaps it, too, should be entitled to the same defense based on the absence of negligence.

Finally, the utility of the communication liability theory, in regard to both public and private universities, is significantly limited by the *New York Times Co. v. Sullivan* privilege of nonmalicious reporting.<sup>142</sup> Since communication liability is imposed upon the university because of its own actions as a participant in the publication of the libel, it might be expected that actual malice on the university's part<sup>143</sup> would have to be shown if the statement fell within the ambit of *New York Times*. In comparison, vicarious liability would not require a showing of actual malice on the university's part. Rather, the plaintiff would only be required to show that the author harbored malice, for that malice would be imputed to the university as principal.<sup>144</sup> A showing that the university itself maliciously participated in the publication of the libel would be unlikely. At the very least it would require proof that the university entertained serious doubts about the truth of material being printed in the newspaper.<sup>145</sup>

### III. CONCLUSION: PLANNING TO MINIMIZE LIABILITY

This Note has examined the traditional theories that might give rise to a university's liability for defamatory material published in its student newspaper. Clearly, the threat of liability is cause for some concern among university administrators. Therefore, it is worth exploring several planning devices that could be used to minimize or eliminate a university's liability.

As was discussed above,<sup>146</sup> separate incorporation of the student newspaper will provide only an uncertain measure of protection for

141. *Hartmann v. American News Co.*, 171 F.2d 581 (7th Cir. 1948); *Albi v. Street & Smith Publications*, 140 F.2d 310 (9th Cir. 1944); *Bowerman v. Detroit Free Press*, 287 Mich. 443, 283 N.W. 642 (1939); *Balabanoff v. Fossani*, 192 Misc. 615, 81 N.Y.S.2d 732 (Sup. Ct. 1948).

142. See notes 22-30 *supra* and accompanying text.

143. This would, of course, require a showing of malice on the part of some agent of the university who was either actually or apparently authorized to exercise some form of supervision or control over the newspaper or authorized to represent the university to the public since a university could only act through its agents.

144. See, e.g., *Atlanta Journal Co. v. Doyal*, 82 Ga. App. 321, 334, 60 S.E.2d 802, 813 (1950). See generally *RESTATEMENT*, *supra* note 41, § 272.

145. See *St. Amant v. Thompson*, 390 U.S. 727 (1968).

146. See notes 85-93 *supra* and accompanying text.



the university. The surest device for minimizing the risk of university liability is insurance against libel. This is already a popular form of protection; over fifty per cent of schools answering the *Review* survey carried some form of libel insurance.<sup>147</sup> As Professor Calabresi has pointed out, part of the justification for vicarious liability derives from the idea that "the master is the best insurer, both in the sense of being able to obtain insurance at the lower rates and in the sense of being most aware of the risk."<sup>148</sup> Insurance can minimize risk of liability without altering the relationship between the university and the student publication. A disadvantage of insurance, especially for the smaller private college, is cost,<sup>149</sup> which may become an important factor during these times of rapidly increasing costs of education, rising tuition, and shrinking enrollment.<sup>150</sup> Libel insurance also may not cover punitive damages.<sup>151</sup> Yet, while insurance may be sufficient from the university's point of view, it has one serious deficiency: it is not preventive. Insurance does nothing to correct problems in personnel or procedure that led to publication of a libel.

Generally, the college campus functions as an enclave for the free interchange of ideas and opinions; in a real sense the campus is society's outpost of reason. It is fitting that student newspapers be given a large measure of independence. However, the student editors and staff must understand not only the rights but also the responsibilities of carrying on a free press. The students should understand what a libel is, what their liability is for defamation, and what they can do to prevent it. To achieve this goal the university should invite journalists to conduct seminars on professional responsibility.<sup>152</sup> Moreover, the student newspaper and the university should develop informal procedures for dealing with potentially libelous material. For example, at the University of Michigan, if the Michigan Daily editors believe material to be potentially libelous, they consult either a law professor or another attorney and discuss it. The procedure is informal, and the student editors make the ultimate decision as to publication.<sup>153</sup>

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147. See Appendix *infra*.

148. Calabresi, *supra* note 39, at 543.

149. For example, the cost of insurance against liability for libel, invasion of privacy, and similar torts for a Midwest newspaper with a circulation of 10,000 and a "good record" is 700 dollars annually (2,500 dollars deductible, 300,000 dollars maximum coverage). Figures provided by Mindus & Mindus, Inc., Ann Arbor, Michigan.

150. See *Recession Hits the Colleges*, NEWSWEEK, March 23, 1971, at 63.

151. One university attorney responding to the *Review* survey noted that the university's insurance policy would not cover punitive damages.

152. See generally Nelson, *Newsmen and the Times Doctrine*, 12 VILL. L. REV. 738 (1967); McLeod & Hawley, *Professionalization Among Newsmen*, 41 JOURNALISM Q. 529 (1964).

153. Conversation with Professor Berlin, Chairman, Board of Student Publications, University of Michigan, Oct. 15, 1972.

Such measures require a high degree of good faith both by students and administration. But that is not inconsistent with the adult relationship which should prevail. While such procedures do not provide a legal insulation from liability, when carried on in an atmosphere of good faith, they are able to treat the roots of the problem rather than merely the symptoms.

## APPENDIX

During the preparation of this Note, the *Review* undertook an informal survey by mailing questionnaires to the editors-in-chief of fifty university newspapers—including those at large, small, public, and private institutions—as well as to the attorneys of these newspapers. The editors-in-chief of the newspapers were asked factual questions concerning the size and composition of their annual budgets, aid furnished to them by the university, and procedures used for screening potentially libelous material. The university attorneys were asked whether the school newspaper was separately incorporated, whether the university exercised, or could exercise, control, whether the university had ever been sued for libel in a student publication, and whether the university had insurance that could cover such a sui-

### I. NEWSPAPER SURVEY

Twenty-six newspapers responded as indicated below.

1) Annual Budgets (total of twenty-six)	\$3,600,000
Largest	700,000
Smallest	1,500
2) Newspapers receiving aid from the university, in the form of:	
a) Student activity fees or other university funds.	19/26 (73%)
b) Material and services donated without charge or below market cost.	21/26 (81%)
office space	16/26 (62%)
office supplies	10/26 (38%)
duplicating services	9/26 (38%)
campus mail service	18/26 (69%)
miscellaneous (budget planning, transpor- tation, other)	12/26 (23%)
Total of newspapers receiving some form of aid from the university.	24/26 (92%)

## II. ATTORNEY SURVEY

Twenty attorneys responded as indicated below.

- 1) Form of the newspaper's organization
  - a) separately incorporated 5/20 (25%)
  - b) unincorporated 15/20 (75%)
- 2) Does the university exercise control, or could it exercise control over the student newspaper?
  - Yes) 15/20 (80%)
  - No) 4/20 (20%)

Of the four answering no, three were at universities with separately incorporated student newspapers.

- 3) Has the university ever been sued for libel in a student publication?
  - Yes) 5/20 (25%)
  - No) 15/20 (75%)

Of these universities one reported being sued three times, for a total of seven suits. Two universities supplied citations. *See* note 21 *supra*.

- 4) Does the university have insurance that would cover a libel action?
  - Yes) 13/20 (65%)
  - No) 7/20 (35%)

## 5. RACIAL DISCRIMINATION

II-G. Joyner v. Whiting, 341 F. Supp. 1244, 477 F. 2d 456 (1973).

Plaintiffs in this case were the student editor-in-chief of the campus newspaper, The Campus Echo, and the student body president of North Carolina Central University, a predominantly black, state-supported school. They brought this action seeking to enjoin the president of the university, defendant Whiting, from failing to support financially The Campus Echo. The defendant had originally temporarily withheld funds, which came from compulsory student fees, from the newspaper until an agreement was reached between the administration and newspaper board as to what journalistic standards the publication should meet. Ultimately, this issue wasn't settled and President Whiting announced "the permanent and irrevocable termination" of the already mandated funding of the newspaper.

President Whiting's reasons for these actions were well-intended and well-founded. A number of racially discriminatory positions had been taken by the newspaper staff. The plaintiff Joyner had informed the administration that no white or other non-negro would be able to serve on the staff of The Campus Echo. Then, the newspaper published the following statement: "Attention: Beginning next issue The Campus Echo will not run white advertising." In other portions of the issue were articles expressing opposition to and dissatisfaction with the increasing number of white and non-negro enrollees at the university. As a result of these racially discriminatory actions, the defendant refused to permit the continued funding of the newspaper.

The district court judge denied the plaintiff's request for relief. Since The Campus Echo was established and financially supported through compulsory student fees, and since its editor-in-chief received a salary, the newspaper was, as a matter of law, an agency of North Carolina Central University and of North Carolina. This being the case, the school, its agencies, and official representatives were subject to the constraints of the Fourteenth Amendment and the Civil Rights Acts. The court found plaintiffs' actions were constitutionally impermissible. Therefore, the state and the university could no longer lawfully support The Campus Echo. Thus, defendant Whiting's action was not only constitutionally permissible, but it was constitutionally required.

On the other hand, the Court said that the defendant could not temporarily suspend the funding of The Campus Echo. It feared that the defendant would control the paper's content and staff. Consequently, the president had no choice but to abolish the newspaper altogether. Indeed, the Court said that "future financial support for any campus newspaper at North Carolina Central University, of any sort, by any means, direct or indirect, from any source of funds, is declared unlawful." The reason for this broad (in the author's opinion, over-broad) prohibition was to protect plaintiffs' First Amendment rights. No matter how praiseworthy the concept of integration may be, the university officials could not withhold funds for the campus newspaper contingent upon the editorial board's renouncement of racist policies and the adoption of a non-discriminatory posture. "No orthodoxy or particular point of view may be imposed by any means, direct

## 6. RELIGIOUS DISCRIMINATION

II-H. Panarella et al v. Birenbaum, et al.  
Mahoney et al v. Schueller, et al.  
302 N.Y.S. 2d 427 (June 25, 1969).

The First and Fourteenth Amendments to the Federal Constitution require the state to maintain a stance of neutrality vis-a-vis religion. The state may neither advance nor hinder religion.

Student at Staten Island published a newspaper called the "Dolphin", while students at Richmond College published the "Richmond Times". Both schools are tax supported public institutions. Both newspapers:

- 1) display the official seal of the City University of New York,
- 2) have faculty members as advisors,
- 3) are partially funded by a mandatory fee collected by the institution from the students,
- 4) have office space and telephones on the campus.

The "Dolphin" carried an article entitled "The Catholic Church—Cancer of Society", which was an attack on the Roman Catholic Church.

The "Richmond Times" published an article which was critical of Jesus.

Student-taxpayers at the two schools sued the institutions, seeking to require the institutions to adopt and enforce regulations prohibiting derogatory and blasphemous attacks on religion.

The defendants advanced two arguments:

- 1) That the institutions connection with the publications was "remote", and thus, no state action could be found.
- 2) That to prohibit publication of articles would constitute a denial of the freedom of speech and freedom of the press provisions of the First Amendment.

The court rejected both arguments, holding that state action and an establishment of religion was clearly present as a result of the use of state facilities and personnel, and that there was no violation of the students freedom of speech.

The students are perfectly free to hold views against religion, to voice these views, and to publish them. They may not however, utilize public facilities to do so . . . . A government that finances religion is no longer neutral. Similarly a government that underwrites attacks on religion is no longer neutral.

The court required the college administration to "prevent publication of such articles in the future, whether by enforcement of existing regulations, enactment of new ones, or otherwise."

The reader should note that in New York City, the college administrator is required to suppress the publication of articles in public college student newspapers (which receive state support) if such articles violate the absolute neutrality required by the First Amendment.

The reader should also re-read the Joyner synopsis, and query why an attack on religion should be prohibited, while an attack on race may not be.

8. PAPER DEFINED AS "INSTRUCTIONAL TOOL"

II-J. Trujillo v. Love, 322 F. Supp. 1266 (D. Colo. 1971).

Plaintiff, Dorothy Trujillo, a student at Southern Colorado State College, brought this action seeking a declaration that the defendants' conduct in censoring her writing and suspending her as a student newspaper editor was an unconstitutional interference with her First Amendment rights. She sought reinstatement to the position of managing editor of the student newspaper, as well as back pay and an injunction restraining the defendants from interfering with her freedom of expression. Prior to July, 1970, the student newspaper involved, the "Arrow", had been financed with student activity fees, but because of a student government decision to allocate more funds to other student activities, the amount of money budgeted for the "Arrow" after July of that year had diminished. The college officials decided to help the student newspaper. They agreed to pay the cost of publishing the newspaper. The student government had only to pay for staff salaries and supplies. The college officials, now with a stake in the student newspaper, promulgated a publications policy under which the newspaper was to be operated as an "instructional tool" for journalism students, under faculty supervision. The failure of the administration to effectuate this policy and their attempt to review certain student writings in advance of publication are the key facts in this case.

Plaintiff had written and was prepared to publish two editorials, one critical of the college president and the other critical of a local judge. The faculty advisor to the newspaper would not permit their publication, stating that he felt them to be potentially libelous and a violation of journalism's canons of ethics. The plaintiff was thereupon suspended from her position because her opposition to the administration's action was considered by them to be evidence of her "unwillingness to learn."

The court sustained the plaintiff's claim since there was evidence that the college's new publication policy had not been sufficiently communicated to the student staff or discussed in the journalism classes, and that the faculty requirement directing the students to submit "controversial" writings for approval was not defined. The court found that "prior to the summer of 1970 the "Arrow" served as a forum for student expression and the new policy of the administration and faculty was not thereafter put into effect with sufficient clarity and consistency to alter the function of the newspaper." It concluded that, in fact, the newspaper had continued to serve as a student forum and that the sanctions and restraints visited upon the plaintiff and her writing were violative of her First Amendment rights.

The court went on to suggest that if the college officials had, in fact, implemented their publication policy (to operate the newspaper as an "instructional tool" for the journalism students) and fully communicated their intention to students, then the administration's action ~~may~~ have been upheld.

## 9. DISTRIBUTION OF UNDERGROUND PAPER

Channing Club v. Board of Regents of Texas Tech University,  
317 F. Supp. 688 (N.D.Tx. 1970)

The plaintiffs in this case sought declaratory and injunctive relief against the officials of Texas Tech University who prohibited the distribution on campus of the "Catalyst", a newspaper published by the Channing Club, and unincorporated association recognized by Texas Tech University, a public school of higher education. The publication contained some language which university officials found objectionable; they outlawed its distribution since they felt that they had the "right to prohibit matter which does not have any literary value and which uses lewd, indecent, and vulgar language."

The court granted the requested relief. The plaintiffs offered evidence which showed that there were areas of the campus which had been designated for the sale and distribution of printed matter. Further, they showed that publications sold in these areas contained the same or similar language that the school officials found objectionable in the "Catalyst", yet these other publications had not been prohibited from sale or distribution on campus. There were also publications in the university library which were either required or recommended reading and which also contained examples of the language found to be objectionable in the Channing Club's newspaper. From the evidence presented, the court held that the university's action was discriminatory and a denial of "equal protection of the laws." The defendants made no showing that a campus disruption or violation of other students' rights would be likely to occur if the "Catalyst" were distributed.

The Channing Club case is important because it shows that university bans upon sale and distribution of literature are vulnerable to equal protection challenges as well as to free speech and due process attacks. It also provides some hints as to what facts may be considered, individually or collectively, to determine "substantial disruption"—that is, disruption of the university or its activities by threats or act of violence, hostile remarks, and restrictions on the rights of other students. Since a threat of substantial disruption would have been grounds to curtail free expression, the court considered this rather fully. The court stated that university officials must be able to point to something more than ungrounded fears when restricting free expression. It said, "It is not enough that administrative officials anticipated the possibility of some disturbance; uncrystallized apprehension of disruption cannot overcome the right to free expression."



## Chapter Three

### THE FEASIBILITY STUDY

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B. Financial Statements . . . . .	III-1
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## Chapter Three

### The Feasibility Study

#### A. GATHERING DATA.

The first step in determining feasibility of independence is to gather from the Business Office of the student press financial and marketing, space, equipment, and general budget information for the preceeding five years, together with projections of needs for the next three years. At this point, one must prepare to prepare a thorough inventory of existing resources, and make projections of resource needs on a medium range (3-5 year) basis.

#### B. FINANCIAL STATEMENTS.

It is recommended that the internal auditor of the institution be asked to prepare, if such is not done on a regular basis, complete audits of all student press accounts for the previous 5 years. The preparation of such audits (assuming audits are not regularly done) may turn up discrepancies, including illegalities which can severely disrupt the planning process. It should be noted that the internal auditors may be committed some number of months in advance, thus, it's very important to get the internal auditors working on the accounts as soon as you think you may have an interest in independence.

At one institution at which independence was attempted, the student press accounts were in such bad shape, despite audits in each of the preceeding four years that it took eight months from the time an audit was requested until the audit was completed. Had this institution waited for the audit, the process of preparing for independence would have been lengthened by six months. The institution did not, however, wait until the audit was completed, and the editor strongly recommends that the institution determine with professional staff the nature and extent of existing assets and liabilities of the student press at the earliest possible date.

#### C. EQUIPMENT INVENTORY.

While the audit is being prepared, several other steps can be undertaken. One of the important considerations in student publications is equipment. Student publications programs will use considerable equipment in the nature of desks, typewriters, typesetting equipment and the like, and it is very important to get an early inventory of all equipment, including its depreciated value. When an institution is a state agency, it is important for the planner to check with the state equipment custodian to be sure that there is a clear understanding of the process for declaring equipment surplus or of otherwise establishing a means whereby equipment can be provided to the student press once it becomes independent. It will frequently cost at least \$30-50,000. to provide new office equipment for a student newspaper, and it probably will not be economically feasible

frequently for the newspaper to purchase such equipment. Thus, the institution may be placed in the position of either arranging to lease equipment to the paper, or to have the equipment currently used declared surplus, and effecting a sale of the equipment to the press. It is the editor's experience that declaring equipment surplus is a lengthy and difficult process, involving negotiations with a number of state agencies, and that even after lengthy bureaucratic negotiations, the equipment will be claimed by another state agency. Thus, a lease of equipment to the student press is the most feasible way to guarantee sufficient operating equipment.

#### D. SPACE INVENTORY.

In addition to the equipment inventory, an inventory should be made of space needs. Frequently, the student press will be located in an area of high student traffic and student density, ie., a student union complex. It is not unusual for a student press to have the exclusive use of 1000-3000 square feet of space. Space in a heavily used area of the university is always a matter of great concern to the administrator, as it is becoming increasingly expensive to heat, light, and clean space. In addition, there are frequently more demands by various groups for the use of space than can be accommodated. Thus, it is important to establish the current amount of space the student press is using, the real space needs and the extent to which space use can be justified. As we observed with respect to equipment, perhaps the best way to guarantee continuance of the student press is for the institution to arrange to lease certain space to the paper at a lease rate which provides compensation to the institution for providing utilities and cleaning, while encouraging the press to make wise use of space.

#### E. PERSONNEL INVENTORY.

The third inventory which should be undertaken, is a complete review of all personnel. Hopefully, there will be a position description describing the functions of all university employees who work full-time or part-time with the student press, and of all student employees who are employed less than full-time. In as much as the major share of the budget of the student press will go for salaries, it is crucial for a thorough analysis of personnel needs, and of salaries and benefits.

Particularly where the institution is a public institution or where there is a collective bargaining contract, there may be some number of employees who have the status of career service or merit employees, and whose job rights may create some difficulty for the move to independence. Typically, such career service or merit employees are assisted in finding other positions within the university or other state agencies, assuming they do not wish to be employed by the independent student press. The editor offers the observation that nothing will create more problems to the person investigating the feasibility of independence than the question of what will happen to the full-time employees of the student press. This question deserves the most careful consideration of all, and the reader is

urged to make use of the resources of the institution's personnel office and other institutional agents knowledgeable and expert in personnel matters at an early date.

The investigator should analyze the personnel needs of the operation for the three operating years subsequent to the date that independence becomes effective. In performing this evaluation, the investigator should give careful consideration to those positions which can be performed by less than full-time professional employees, and those functions which can only be performed by full-time professional employees. The example of the University of Oregon, where only the business manager is a full-time professional employee, should be studied.

#### F. MARKETING STUDY.

The fourth matter which should be investigated very carefully, and assistance sought either from private marketing consultants or from faculty and students in the business program of the institution, is the development of an analysis of the market which the student press has for the sale of its product. While it may be difficult to initially consider the question of sale of the paper to students, it will be recalled that the student press has sold advertising for some period of years, a relatively well established advertising market may be readily available. The editor suggests building on this base, and through consultation with advertising professionals on existing independent newspapers in the city, or with marketing consultants determine how much advertising could reasonably be sold during what periods of the year. A review of advertising inevitably leads to a review of personnel involved in advertising, the training which such persons receive, the supervision of advertising salesmen, and their compensation. Another area in which a professional person may well make an excellent contribution is that of a full-time advertising manager.

In addition to personnel who sell advertising, one must review the advertising rates which are charged by the student press. It would be fairly simple to compare the number of readers of the press, and the rate charged by the press, with other independent newspaper operations in the city, and to reach a reasonable rate which enables the student press to be competitive and perhaps to even offer a better advertising product to certain advertisers.

In addition to advertising, one must ask whether there is any market in the service area for printing services. With those student presses which do their own pre-print work, serious consideration should be given to marketing a pre-print service for college departments or other agencies or institutions which have need for lay-out, make-up and related services.

With regard to advertising clients, the investigator should carefully check the possibility of the needs which the institution has for advertising matters which are of public concern. Several institutions have provided a university page of record, on which page are printed official announcements of the institution. The institution pays the standard rate for the purpose of such a page of advertising.

Finally, the question of whether or not the paper itself is sold is a matter which deserves some consideration. Frequently, the newspaper has been given away free for some period of years, and it may be felt that it would not serve the best interests of the paper to suddenly begin to sell its products.

Once the investigator has gathered the inventories of assets and liabilities, has determined what equipment is currently available and what will be needed for the next three years, has inventoried space currently allocated and future space needs, has determined what personnel and what types of personnel are currently employed and what types of personnel will be needed for a period of years, has performed a marketing analysis of services which can be sold and has cranked all this data into a reasonable budgetary projection for a three year time span, then the investigator is able to determine what the anticipated cost of an operation will be, and to compare such costs with the revenues which can reasonably be expected to be generated.

It should be understood that a student press with either a small or a large budget can become independent. To take one extreme, a student press in a community college can become independent with a total operating budget of under \$8,000. once the initial capital outlay for equipment was effected.

An older student press at a large university publishing on a daily basis may have an operating budget of \$200,000. or more annually. Capital outlay required may be \$100,000. or more. Thus, the initial start-up cost for the independent student press at an institution with a history and tradition of excellence may be much greater than at a developing institution.

To take one hypothetical example of a medium sized institution (15,000 students), the following resources will be necessary:

#### SPACE

2000 sq. ft. @ \$3.00 per sq. ft.	\$6,000.00
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#### EQUIPMENT

Desk	
Typewriter	
Chairs	
Telephone	
Photo Lab	
Print and pre-print	\$25,000-150,000.00 initial outlay

#### PERSONNEL

Business Manager	
Secretary	
Advertising Manager	
3 advertising salesmen	
Editor	
2 assistant editors	
20 reporters	\$40,000.00

#### MISCELLANY

Printing	
Paper	
Other expenses	

The data below constitutes a college paper budget for a paper publishing three times a week.

## SALES

Ads	\$131,608.56	based on 15% sales increase
subscriptions	400.00	
TOTAL	<u>\$132,008.56</u>	

## EXPENSES

Salaries	
News	11,000.00
Ads	9,100.00
Commissions	13,093.54
Production	7,200.00
Consultants fee	1,200.00
Fees	600.00
Travel	1,150.00
Dues-sub	300.00
Office supplies	1,000.00
Production supplies	3,000.00
Photo supplies	800.00
Printing	48,534.87
Telephone	1,500.00
Postage	2,500.00
Maintenance	1,400.00
Rental	7,000.00
Bad debts	2,000.00
Misc.	3,000.00
TOTAL	<u>\$114,078.41</u>
NET	17,230.15

## Proposed Salaries

POSITION	EARNINGS/MONTH
<u>NEWS</u>	
Editor	\$200
Managing Editor	150
News Editor	125
Edit. Editor	100
Sports Editor	75
Arts Editor	40
Photog. Editor	80
Copy Editor	60
" "	60
" "	60
Staff writer	50
" "	50
" "	40
" "	40
Proofreader	40
"	40
<u>PRODUCTION</u>	
News Prod. manager	90
Adv. Prod. manager	100
Asst. adv. Prod. manager	50
" " " "	50
Circulation manager	110

1973 Printing Costs  
Tabloid Size Paper

<u>Pressrun</u>	<u>8-Page</u>	<u>12-Page</u>	<u>16-Page</u>
10,000	\$161.40	\$204.60	\$247.80
11,000	\$173.40	\$220.20	\$267.00
12,000	\$185.40	\$235.80	\$286.00
13,000	\$197.40	\$251.40	\$305.40
14,000	\$209.40	\$267.00	\$324.60
15,000	\$221.40	\$282.60	\$343.80

Halftones: \$.80 each

Color: \$35

Pickup and Delivery Service at 15 cents per mile.



## Chapter Four

### Implementation: The Florida State University

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## A. THE PLAN

### TASKS TO BE COMPLETED AND TIMETABLE FOR IMPLEMENTATION OF THE INDEPENDENT STUDENT PUBLICATIONS PROGRAM

<u>Task</u>	<u>Initiated</u>	<u>Completion Date</u>	<u>Responsible Person</u>
Audit	1 July 1972	1 October 1972	Director of Internal Control
Response from SPPB as to whether they will establish the private corporation	10 July 1972	17 July 1972	Chairman of SPPB
Retention of lawyer for incorporation procedures	17 July 1972		Chairman of SPPB
Meeting between SPPB and lawyer to determine officers and directors of corporation	18 July 1972	18 July 1972	Chairman of SPPB
First meeting of new Board of Directors	11 August 1972	11 August 1972	Chairman of SPPB and attorney
Drafting of lease for use of space and equipment	1 August 1972	30 August 1972	University General Counsel
Development of an advertising program plan	17 July 1972	10 August 1972 (progress report)	Vice President for Student Affairs and President
Legal research necessary to grant exclusive use of name <u>Florida Flambeau</u>	15 July 1972	15 August 1972	General Counsel of FSU
Drafting contract for University purchase of advertising space in <u>Flambeau</u>	15 July 1972	10 August 1972	General Counsel of FSU
Employment of supportive staff for publications	1 September 1972		New private corporation

<u>Task</u>	<u>Initiated</u>	<u>Completion Date</u>	<u>Responsible Person</u>
Publication of first <u>Flambeau</u> under direction of new independent corporation	19 Sept. 1972		New private corporation

B. STANDARDS OF QUALITY AS ACCEPTED BY THE PUBLICATIONS CORPORATION.

1. Independence. Student publications must be free from undue restraint. At the very least, there should be no prior censorship of their contents. Otherwise, the channel and substance of communication would doubtlessly be constricted. If independence is to be a fact, however, editors and reporters must accept the responsibility for accuracy and objectivity, as well as behavior that is legal and ethical.
2. Timeliness. One dimension of the valuable publication is the currency and relevance of its contents. Thus, every effort should be made to build timeliness into student publications—whether they be disseminated daily or yearly. Nothing, perhaps, is so bland or disconcerting as reading old news or the analysis of an issue long since resolved, irrelevant, or simply already "beat to death."
3. Accuracy. Student publications must exemplify accuracy in reporting. Not only is accuracy a function of control techniques, it is also a product of accepting a philosophy of reporting that will guarantee, insofar as possible, that the contents of the publication present as complete a picture as possible of the reported event.
4. Objectivity. The publication must be a source of objective reporting of events. At the same time, it must provide a forum for a balance of opinions; that is to say, editors and reporters alike must endeavor to give readers an exposure to all sides of issues. Since student publications are potentially powerful sources of persuasion, recognition of this important dual role must be made by all those directly involved in their construction and distribution, but particularly by editors. To both editor and reporter, the guiding light must be truth. Editors may express opinions editorially that are fallacious or even demeaning but they should be based in fact. Reporters, however, have no choice; they must never waver from the truth in presenting an unbiased and complete story.
5. Legal and Ethical Responsibility. Full recognition of prevailing legal and ethical standards of behavior must accompany creation and distribution of student publications. To hold otherwise is to negate the usefulness of the instruments themselves. Thus, every effort should be made to avoid unnecessary affronting of the collective good taste of the community. That is to say, editors, reporters, and photographers have at least an unspoken obligation to be sensitive to the prevailing legal and ethical issues and to take them into account carefully as they prepare their publications. Of course, it is recognized that both legal and ethical standards change over time and, in keeping with the criterion of timeliness mentioned above, the publications must be flexible enough to accommodate changing attitudes and regulations.

6. Balance. A student publication should, generally speaking, present a wide variety of viewpoints and its coverage of events should be broad. There should be a recognition of responsibility to ensure that differing philosophies have an opportunity to be made known to the readers. Without this characteristic, the publication soon loses its real value to the academic community.
7. Relevance. Primary emphasis in the coverage of news items should be on those events most directly related to students.
8. Reader Response. Feedback opportunities for readers should be provided so that answers to editorial opinions become a portion of the student newspaper's format.
9. News and Comment Distinction. A clear distinction should exist between news columns and editorial comment.
10. Frequency of Publication. The FLAMBEAU should be a daily publication. The size of its readership demands the service of a daily newspaper. A daily paper can best provide the immediacy of service to which the readership has grown accustomed.

C. ARTICLES OF INCORPORATION OF THE FLORIDA FLAMBEAU FOUNDATION, INC.

The undersigned subscribers to these Articles of Incorporation, each a natural person competent to contract, hereby associate themselves together to form a non-profit corporation under the provisions of Chapter 617, Florida Statutes.

ARTICLE I.  
NAME

The name of this corporation is: THE FLORIDA FLAMBEAU FOUNDATION, INC.

ARTICLE II.  
PURPOSE

The purposes of this corporation shall be:

(a) to edit, print, publish, sell and distribute at Florida State University, a student newspaper, which shall be known as "THE FLORIDA FLAMBEAU" hereinafter referred to as "THE FLAMBEAU" and such other student publications as the members of the corporation shall determine desirable.

(b) to contract for the printing and publishing of its publications; to purchase, acquire, apply for, register, secure, hold, own or sell copyrights, trademarks, tradenames and distinctive marks; to purchase or otherwise acquire, own or hold real and personal property of every kind and description suitable, necessary, useful, or advisable in connection with any of the purposes of the corporation, and to sell, assign, convey, transfer, lease, mortgage, pledge, exchange, or otherwise dispose of any such property and to make and enter into all contracts, agreements and obligations in any way necessary, useful or advisable to the effectuation of the purposes of the corporation.

(c) to engage in any activity of a non-profit corporation permitted under the Laws of the United States and of Florida.

(d) the corporation is organized solely for educational and literary purposes and in furtherance of those purposes will the corporation carry out the activity set forth in these Articles, and the corporation shall not conduct or carry on any activity not permitted to be conducted or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170 (c) (2) of such code and regulations as they now exist or as they may hereafter be amended.

ARTICLE III.  
MEMBERSHIP

The membership of the corporation shall consist of the members of the Board of Directors. The business and affairs of the corporation shall be managed by a Board of Directors consisting of not less than five (5) nor

more than fifteen (15) members, the exact number to be fixed in the By-Laws of the corporation, and unless and until otherwise provided in the By-Laws, the Board of Directors shall consist of seven (7) members. The Board of Directors, unless and until otherwise provided in the By-Laws, shall be divided into three (3) categories (classes) as follows:

(a) CATEGORY (CLASS) A. Four members who are registered students in residence at the Tallahassee campus of Florida State University, shall be selected in accordance with the provisions of the Constitution of the Florida State University Senate. This selection shall occur by means of the regularly held student elections sponsored by the Florida State University Senate. The initial members in Class A will consist of the three present student members of the Student Publications Policy Board. They shall continue as directors and members of the corporation until the next regularly held student election pursuant to the provisions of the Student Senate Constitution.

(b) CATEGORY (CLASS) B. Two members, who are members of the regular faculty of Florida State University, shall be selected pursuant to the Constitution of the University Senate, and such selection shall be made by means of the regular election procedure of the University Senate. The initial members and directors, who are members of the regular faculty of Florida State University, shall be the current faculty members of the Student Publications Policy Board who shall continue to hold remaining members and directors until the next regularly held election pursuant to the Constitution of the University Senate.

(c) CATEGORY (CLASS) C. One member who is a resident of Leon County, Florida who shall be selected by the President of the Florida State University, or a person under his authority, with the advice and consent of the other members of the Board of Directors of this corporation. Terms of this member and director shall be for a period of three (3) years from the date of his appointment or until his resignation.

#### ARTICLE IV. TERM OF EXISTENCE

This corporation shall exist perpetually.

#### ARTICLE V. SUBSCRIBERS

The names and addresses of the subscribers to this corporation are as follows:

#### ARTICLE VI. OFFICERS

The officers of the corporation, who shall manage the affairs of the corporation, and who shall be elected \_\_\_\_\_

will include a President, Vice-President, Secretary and Treasurer. The initial officers of the corporation until the time of new election shall be:

President  
Vice-President  
Secretary  
Treasurer

#### ARTICLE VII. BOARD OF DIRECTORS

The Board of Directors shall consist of not less than five (5) nor more than fifteen (15) members, the exact number to be fixed in the By-laws of the corporation, and unless and until otherwise provided in the By-laws, the Board of Directors shall consist of seven (7) members. The names of the Board of Directors who are to manage all of the affairs of the corporation, until the first election or appointment under the Charter, are as follows:

#### ARTICLE VIII. BY-LAWS

A committee of the Board of Directors shall submit a draft of proposed By-laws. To become effective, these By-laws must be approved by a majority vote of a meeting of the members. These By-laws may be amended, altered or extended in the manner prescribed in the By-laws.

#### ARTICLE IX. AMENDMENTS

These Articles may be amended at a general meeting of the members of the corporation held pursuant to a notice being given to all the members that a resolution will be presented to the membership at such meeting to amend these Articles of Incorporation, such amendments may be adopted by a majority vote of the members present at such meeting, and the resolution as so adopted shall then be presented to the Secretary of State of the State of Florida for approval of such amendment to these Articles of Incorporation.

#### ARTICLE X. BENEFIT TO MEMBERS

No member, director or officer of this corporation shall receive any pecuniary benefit from it, except such compensation as may be allowed for services actually rendered. In the event of the dissolution of this corporation all of its property, real, personal and mixed, wherever situated, shall vest immediately and absolutely in the Trustees of Florida State University to be used as Financial Aid for students attending Florida State University, and none of the property shall inure to the benefit of any officer, director, or member of the corporation.



#### D. LEASE AGREEMENT

This lease agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents, a public corporation of the State of Florida acting for and on behalf of the Florida State University (hereinafter called the lessor) and The Florida Flambeau Foundation, Inc., a non-profit corporation incorporated under the provisions of Florida Statutes, Chapter 617 (hereinafter called the lessee).

#### WITNESSETH

That the lessor, for and in consideration of the covenants expressed in those other agreement between the parties executed the \_\_\_\_\_ day of \_\_\_\_\_, 1972, and those covenants and agreements hereinafter mentioned to be kept and performed by the lessee, has demised and leased to the lessee, for the term and under the conditions hereinafter set out, those certain premises in Tallahassee, Leon County, Florida, particularly described as follows:

That portion of the University Union Building on the Florida State University campus to include Rooms 302, 306, 308, 318, 324, 326, 328, 330, 332, 334, and 336, and the furnishings and equipment on the aforementioned demised premises as specifically described in Schedule A attached to this agreement and incorporated herein.

#### TERM

To have and to hold the above described premises for a term commencing on the \_\_\_\_\_ day of September, 1972 to and including the \_\_\_\_\_ day of September, 1973.

#### HEATING, AIR CONDITIONING AND JANITOR SERVICES

The lessor agrees to furnish to the lessee heating, air conditioning and janitor services for the leased premises during the term of the lease at the expense of the lessor, provided that lessor shall not be responsible for any interruption in such services necessary for maintenance, repair or replacement of equipment or resulting from an interruption in sources of power.

#### MAINTENANCE AND REPAIRS

The lessor shall provide for interior maintenance and repairs in accordance with generally accepted good practices, including repainting, maintenance of light fixtures, and other interior maintenance as may be necessary due to normal usage. The lessee shall, during the term of this lease, keep the interior of the demised premises and the equipment thereon in as good a state of repair as it is at the time of the commencement of the lease, reasonable wear and tear and unavoidable casualties excepted. The lessor shall maintain and keep in repair the exterior of the demised premises

during the term of this lease and shall be responsible for the replacement of all windows broken or damaged in the demised premises, except such breakage or damage caused to the exterior of the demised premises by the lessee, its officers, agents or employees.

#### UTILITIES

The lessor will promptly pay all gas, water, power and electric light rates or charges which may become payable during the term of this lease for the gas, water, and electricity used by the lessee on the premises. The lessee shall be responsible for all telephone charges for telephones installed on the demised premises and telephone service to the demised premises.

#### ALTERATIONS

The lessee shall make no alterations in or to the demised premises during the term of this lease except upon the prior written consent thereto of the lessor.

#### INJURY OR DAMAGE TO PROPERTY ON PREMISES

All property described within Schedule A [Schedule A is omitted] and located on the premises during the continuance of this lease shall be at the risk of the lessor, and except for any negligence of the lessee, the lessee shall not be liable to the lessor for any loss or damage to said property on the premises. All other property of any kind that may be on the premises during the continuance of this lease shall be at the sole risk of the lessee, and except for any negligence of the lessor, the lessor shall not be responsible to the lessee or any other person for any injury, loss or damage to any other property or to any person on the premises.

#### FIRE AND OTHER HAZARDS

In the event that the demised premises, or the major part thereof, are destroyed by fire, lightening, storm or other casualty, the lessor at its option may forthwith repair the damage to such demised premises at its own expense and cost. The lessor shall not be responsible to the lessee for any interruption in lessee's occupation of the premises on account of such loss or damage, should it be necessary for lessee's occupation of the premises to cease until necessary repairs to the demised premises may be completed. Should the premises be only partially destroyed, so that the major part thereof is useable by the lessee, then the lessee shall have the right to continue occupancy of the undamaged portion of the premises and to the extent damaged, the premises shall be restored by the lessor as speedily as is practicable.

#### EXPIRATION OF TERM

At the expiration of the term, the lessee will peaceably yield up to the lessor the demised premises in good and tenantable repair. It is understood and agreed between the parties that the lessee shall have the right to remove from the premises all personal property of the lessee and all fixtures or equipment placed or installed on the premises by the lessee, with the approval of the lessor, provided the lessee restores the premises to as good a state of repair as they were prior to the removal.

#### SUBLETTING AND ASSIGNMENT

The lessee shall have no right to sublet all or any part of the demised premises or to assign all or any part of the demised premises.

#### NOT CONSENT TO SUE

The provisions, terms or conditions of this lease shall not be construed as a consent of the State of Florida to be sued because of said leasehold.

#### WAIVER OF DEFAULTS

The waiver by the lessor of any breach of this lease by the lessee shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this lease.

#### RIGHT OF LESSOR TO INSPECT

The lessor, at all reasonable times, may enter into and upon the demised premises for the purpose of viewing the same and for the purpose of making any such repairs as they are required to make under the terms of this lease.

#### BREACH OF COVENANT

Except as provided in this lease, if the lessee shall neglect or fail to perform or observe any covenant herein contained, which on the lessee's part is to be performed, and such default shall continue for a period of fifteen (15) days after written notice thereof to the lessee from the lessor, then the lessor lawfully may, immediately, or at any time thereafter, and without further notice or demand, enter into and upon the demised premises or any part thereof and repossess the same and remove the lessee and its effects without being taken or deemed to be guilty of any manner of trespass and thereupon the lease agreement shall terminate.

#### TAXES AND INSURANCE

Lessor shall be responsible for all taxes and fire insurance premiums

on the demised premises. Lessor shall not be liable to carry fire insurance on the person or property of the lessee or any other person or property which may now or hereafter be placed in the demised premises by the lessee and shall not be liable for any public liability insurance on the person of the lessee or any other person on the demised premises.

#### AVAILABILITY OF FUNDS

The obligations of the lessor under this lease agreement and the agreements between the parties attached hereto as Exhibit 1 are subject to the availability of funds lawfully appropriated or approved annually for such purposes by the Legislature of the State of Florida.

#### USE OF THE PREMISES

The demised premises shall be used solely for those purposes covered by the agreements between the parties executed the \_\_\_\_ day of \_\_\_\_\_, 1972, and attached hereto as Exhibit 1. The lessee will not make or suffer any unlawful, improper or offensive use of the premises or any use or occupancy thereof contrary to the laws of the State of Florida or the ordinances of the City of Tallahassee, or the Rules and Regulations of the Board of Regents or The Florida State University, now or hereafter made.

#### RENEWAL

The parties may renew this lease for an additional one year upon terms and conditions to be decided upon in writing by the parties.

#### RIGHT TO TERMINATE

The lessee shall have the right to terminate, without penalty, this lease upon giving six (6) months written notice to the lessor by certified mail, return receipt requested.

#### NOTICES

All notices required to be served on the lessor shall be served by registered or certified mail, return receipt requested, to the Director of the University Union, Florida State University, Tallahassee, Florida, 32306, and all notices required to be served upon the lessee shall be served by registered or certified mail, return receipt requested, at the address of the lessee at \_\_\_\_\_.

#### DEFINITION OF TERMS

1. The terms "lease", "lease agreement" or "agreement" shall be inclusive of each other and shall also include any renewals, extensions or

modifications of this lease.

2. The terms "lessor", "lessee" shall include the successors and assigns of the parties hereto.

3. The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

ADDITIONAL TERMS

Any and all additional covenants or conditions appear in Schedule A and Exhibit 1 attached to this agreement and incorporated herein.

In witness whereof the parties hereto have hereunto executed this instrument for the purposes expressed, the day and year above shown.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF FLORIDA STATE  
UNIVERSITY

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

(CORPORATE SEAL)

FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

(CORPORATE SEAL)

E. CONTRACT FOR PRINTING SERVICES AND PERSONNEL

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1972, by and between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of Florida, (hereinafter referred to as the Foundation);

WITNESSETH:

WHEREAS, the University with approval of the Board of Regents approved a plan for the publication of the Florida Flambeau newspaper by an independent non-profit corporation, and

WHEREAS, The Florida Flambeau Foundation, Inc., has been organized and incorporated for the purpose of printing a newspaper to continue under the name of the Florida Flambeau, for general distribution to the students, faculty and staff of the University, and

WHEREAS, the University is willing and able to provide certain services to the Foundation in order to provide an orderly and business-like transition to the accomplishment of publication of the Florida Flambeau by the Foundation, and

WHEREAS, the Foundation has been unable to secure all necessary services and personnel in time to begin publication at the beginning of the academic year, to-wit: September 12, 1972,

NOW, THEREFORE, in consideration of the mutual obligations between the parties in this and other agreements of even date entered into between the parties the University agrees to provide pre-printing services and personnel to The Flambeau according to the following terms and conditions:

1. The University will provide the following pre-printing services to the Foundation as necessary to begin publications until October 8, 1972, unless terminated or extended by further written agreement of the parties. Pre-printing services shall be described as and include providing camera ready copy consisting of typeset copy composed on an office machine, together with line drawings and continuous-tone copy that is ready in all respects for photo mechanical reproduction. Camera ready copy will include a basic reproduction page consisting of oversized or undersized continuous-tone copy and/or line art. In most instances line art will be mortised or pasted into position on the basic reproduction page. Parapaqued dropout panels will be applied to the basic reproduction page in the proper scale by the lab. Some photographs, illustrations or parts thereof will be reversed and/or screened. Continuous-tone copy is to be screened and fitted by the printer into the windows of the negative created by parapaqued areas on the basic reproduction page. Any special art work required for make-up of ads will be performed as part of these services. Such services shall begin on September 7 and continue through October 8 and shall be provided to the extent provided by the University in publishing the Florida Flambeau during the academic year 1971-1972.

2. This Contract for Services is based upon the present equipment capabilities of the Florida State University Student Publications Lab. These equipment capabilities are described in Exhibit "A" attached hereto and made a part hereof by reference, and shall suffice to satisfy the requirements of this agreement.

3. In consideration of the services provided by the University under this agreement, the Foundation shall pay the University a contract price based upon a per-page cost as follows:

- (a). Twenty (20) pages .....\$17 per page
- (b). Twelve to Sixteen pages .....\$20 per page
- (c). Eight (8) pages .....\$25 per page

Per page price shall be based upon the average number of pages per day published during the term of this agreement.

4. Pre-printing services described in this agreement do not include duplicating services, photographic services, or xerox facilities or services.

5. The University's obligation to provide the foregoing pre-printing service is conditioned upon receipt from the Foundation of news copy and ad copy according to a deadline shown in Exhibit "B" which is attached hereto and made a part hereof by reference.

6. The University agrees to maintain the position of student publications business manager until and including October 5, 1972. Further, the University will maintain the position of student publications secretary until and including October 9, 1972. These employees will devote full time to the Foundation from the date hereof until the foregoing dates, or until the current employees terminate their employment with the University on their own initiative, whichever occurs sooner.

7. This agreement is dependent upon those agreements of even date executed by the parties hereto and shall cease prior to its own date of termination in the event of the cessation of the obligations under any of the referenced agreements.

8. The Foundation warrants that it has the right to use all materials submitted for pre-printing and expressly agrees to hold the University harmless from any and all claims of copyright, privacy or otherwise arising out of the printing or publication of such material.

WITNESSES:

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF THE FLORIDA STATE  
UNIVERSITY:

BY: \_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_

BY: \_\_\_\_\_  
Its President

\_\_\_\_\_

BY: \_\_\_\_\_  
Its Corporate Secretary

Approved as to Form and Content:

BY: \_\_\_\_\_  
General Counsel,  
Florida Board of Education

(CORPORATE SEAL)



## EXHIBIT A

### EQUIPMENT CAPABILITIES

#### A. Pre-Print

1. Addressograph Striped Adhesive Wax Coater  
Supplement to paste-up copy, applies wax coating to back of copy for adhesion to work sheet.
2. Fotorite rapid processor
  - a) Develops strips of exposed film from headliner.
  - b) Develops film from phototypesetting equipment.
  - c) Develops photographic paper for reverse and positive ad copy.
3. Compugraphic 7200 Headliner  
Keyboard operated headliner creates typography for ads and newspaper headlines and other printed matter in 14-72 point. Accepts up to 12 characters per second in 14 point. (Speed decreases as point size increases.)
4. I.B.M. Selectric Recorders (2) Model V  
Records all copy input for printing matter on magnetic tape coded for desired composure format.
5. I.B.M. Selectric Composer MT/Reader
  - a) Reads pre-coded magnetic tape automatically and prints out desired format.
  - b) Specified output, 20 11 pica lines/minute, point sizes 6-12 point (only manually)
6. Varityper 720 Composing Machine
  - a) Sets copy with manual justification for ads and duplicating work.
7. Varityper 820 Headliner
  - a) Sets headlines and develops on 35 mm film.
  - b) This machine is used as a back-up for 7200 headliner.
8. Dual Image Keyboards, Compugraphic (2)  
Records all copy inputs for printing matter on paper tape coded for desired composition. This unit replaces I.B.M. Selectric recorders.
9. Compugraphic 4961 TL Phototypesetter
  - a) Available for paper tape fo keyboard input.
  - b) Specified output 30, 11 pica lines/minute.
  - c) Type sizes 5 through 24 point automatically.
  - d) Leading 0 through 31 1/2 points in 1/2 point increments.
  - e) Automatic justification and hyphenation utilizing 18 units line measure for more uniform spacing of lines.
  - f) Maintenance by production lab personnel trained by Compugraphic.

## B. Duplicating

1. A.B. Dick 360 Press
  - a) Utilized in reproduction of all forms of printing matter from camera-ready copy. Printing up to 11" x 17" in size.
  - b) Capable of utilization of any printing colors.
2. Apeco Laminator  
Laminates printed matter primarily for paste-up preservation up to 11" in diameter.
3. A.B. Dick Ditto (Spirit 250 machine).  
Ditto duplication of sizes 8 1/2" x 11" and 8 1/2" x 14" only from stencil.
4. Gestetner Mimeo #360  
Duplication of printed matter from stencil of sizes 8 1/2" x 11" and 8 1/2" x 14" only. Utilizes black ink only.
5. Ape Lamp
  - a) Makes metal plate for offset printing.
  - b) Utilized in burning positive photographic paper in reproduction of ads.
  - c) Utilized in burning color keys for verification of halftone reproduction.
6. Nu-Ape Horizontal Camera
  - a) Converts all camera-ready copy into negative film form from 20-300%.
  - b) Converts all camera-ready copy into positive reproductions and transparencies form from 20-300% utilizing P.M.T. paper.
  - c) Utilizes film size up to 14" x 18".
  - d) This machine is utilized by both Duplicating and Pre-Print.
7. Xerox 3600
  - a) Xeroxes 8 1/2" x 11" and 8 1/2" x 14".
8. Beam Cutter  
Utilized in cutting all paper sizes.

## C. Photography

1. Has camera capability, utilizing 35mm, 2 1/4", and 4 x 5 graphic with light meters, strobes and other related photographic equipment.
2. Darkroom facilities for development of all black and white pictures taken.
3. Has capability of making prints for newspaper reproduction.

## F. LICENSE AGREEMENT

This agreement made and entered into this \_\_\_\_\_ day of September, 1972, by and between the State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of the Florida State University (hereinafter referred to as the University) and the Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the Foundation).

### WITNESSETH:

Whereas the University with approval of the Florida Board of Regents has approved a plan for the publication of the Florida Flambeau Newspaper by the Foundation, and,

Whereas the Foundation has been organized and incorporated for the purpose of printing the newspaper for general distribution to the students, faculty and staff of the University, and

Whereas it is the intent of the parties that the newspaper continue to exist and be published under the name "The Florida Flambeau," and

Whereas the Foundation is, therefore, desirous of using the name "The Florida Flambeau" as the name of the publication, and

Whereas the University is willing to grant an exclusive license to the Foundation to use the name "The Florida Flambeau" as the name of the aforementioned publication,

NOW THEREFORE the parties hereto agree as follows:

The University hereby grants to the Foundation an exclusive license to use the name "The Florida Flambeau" subject to the conditions expressed herein.

The use of the name "The Florida Flambeau" by the Foundation shall be consistent with those agreements entered into the \_\_\_\_\_ day of \_\_\_\_\_, 1972, between the parties to this agreement and attached hereto as Exhibit I and incorporated herein.

It is expressly agreed by the parties that the name "The Florida Flambeau" shall be used by the Foundation only on the newspaper published by the Foundation and distributed under the terms of the aforementioned agreements between the parties.

It is expressly agreed between the parties that the University retains ultimate rights to use the name "The Florida Flambeau" and that in the event the Foundation is dissolved, voluntarily or involuntarily, or in the event that the agreements between the parties executed this evendate fail to be performed by the Foundation the right to the use of the name "The Florida Flambeau" will revert to the University.

This agreement and the rights contained herein shall not be assignable by the Foundation without the prior written consent of the University.

It is expressly agreed by and between the parties that the use of any other name, designation, or title previously used by the University in publishing any University or student publication shall be by separate written agreement of the parties to this agreement.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF FLORIDA STATE  
UNIVERSITY

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

(CORPORATE SEAL)

FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

ATTEST

Its

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

Approved as to Form and Content:

By:

\_\_\_\_\_  
General Counsel,  
Florida Board of Education

G. ASSIGNMENT OF ACCOUNT RECEIVABLES

THIS AGREEMENT, made and entered into this \_\_\_\_ day of September, 1972, by and between State of Florida, Department of Education, Division of Universities, Florida Board of Regents, acting for and on behalf of The Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter also referred to as the Foundation).

WITNESSETH:

WHEREAS, the University with approval of the Board of Regents approved a plan for the publication of the Florida Flambeau newspaper by an independent non-profit corporation, and

WHEREAS, the Florida Flambeau Foundation, Inc. has been organized and incorporated for the purpose of printing a newspaper to continue under the name of The Florida Flambeau, for general distribution to the students, faculty and staff of the University, and

WHEREAS, there are certain advertising accounts maintained by The Florida Flambeau newspaper, under the authority of the University and the Board of Regents, and

WHEREAS, certain of these accounts as shown in Exhibit A attached hereto and incorporated herein, were not fully paid by advertisers, creating accounts receivable to the newspaper, and

WHEREAS, the University and the Board of Regents have determined that it would be in the best interest of the University to support an independent corporation organized for educational and literary purposes, and for the purpose of publishing a newspaper of general circulation among the students, faculty and staff of the University,

NOW THEREFORE, in consideration of the agreement of the Foundation to distribute its newspaper at no cost to the students, faculty and staff of the University through August 31, 1973, and in consideration of the agreement of the Foundation to provide educational and literary experiences for students of the University and other members of the University community, the Board of Regents and the University agree hereby to assign all accounts receivable listed in Exhibit A attached hereto and incorporated herein, accrued or accruing since July 29, 1972 to the credit of and maintained by the student newspaper, The Florida Flambeau, and now held by the University or collectable by the University or the Board of Regents to The Florida Flambeau Foundation, Inc., with all rights of collection, compromise and settlement of those accounts receivable and further assign all rights of the University or the Board of Regents under any advertising agreements which were formerly entered into between the student newspaper, The Florida Flambeau and its advertisers.

Should the Foundation be dissolved voluntarily or involuntarily, all rights hereunder remaining in the Foundation shall revert to the University.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING  
FOR AND ON BEHALF OF THE FLORIDA  
STATE UNIVERSITY:

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its President  
\_\_\_\_\_  
Its Corporate Secretary

(CORPORATE SEAL)

Approved as to Form and Content

By: \_\_\_\_\_  
General Counsel,  
Florida Board of Education

Editor's Note - Exhibit "A" is omitted.

#### H. CONTRACT FOR PURCHASE AND SALE OF ADVERTISING

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of September, 1972, by and between The State of Florida, Department of Education, Division of Universities, Florida Board of Regents acting for and on behalf of The Florida State University (hereinafter referred to as the University) and The Florida Flambeau Foundation, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the Foundation).

#### WITNESSETH:

WHEREAS, the University has determined that it would be in the best interest of the University to support and to obtain advertising in a newspaper of general circulation among the University's student body, faculty, and staff, and

WHEREAS, the Foundation has been organized and established for the purposes of printing such a newspaper under a plan approved by the University and the Board of Regents;

NOW THEREFORE, in consideration of the mutual covenants and obligations of the parties hereto, the University agrees to purchase and the Foundation agrees to provide advertising upon the following terms and conditions:

1. The term of this contract shall be for one (1) year from September 11, 1972, through September 10, 1973.

2. The University agrees to purchase four (4) full pages, 320 column inches, of advertising or news space per week for thirty-two (32) weeks, or the equivalent, at an annual cost and total contract price of Twenty Thousand Four Hundred, Eighty and 00/100 (\$20,480.00) Dollars. It is agreed between the parties that this advertising, or its equivalent, shall be based on unit prices derived as follows:

- (a) 80 column inches per page x \$2.00 per column inches — \$160.00 per page.
- (b) \$160.00 per page x 4 pages per week — \$640.00 per week.
- (c) \$640.00 per week x 32 weeks — \$20,480.00

It is agreed by the parties that the basic unit price for this advertising and news shall be \$2.00 per column inch.

3. The Foundation agrees to supply to the University four pages, 320 column inches, during each week of this agreement and to include the supplying of at least 80 column inches per day unless otherwise agreed to by the parties for advertising and news submitted by the University.

4. Advertising and news as discussed herein shall be defined to include all advertising or noticing of events, functions, meetings, or other occasions at the University, articles or stories related to any University activity, function, event, or other item of interest to the general University community, and any other material, or any other article, story, or description of, about, or concerning any matter of interest to the University community

All advertising and news material shall be as composed and selected by the University except that it is reserved to the Foundation to use good faith and reasonable discretion in layout of copy. This right reserved to the Foundation shall not extend to the Foundation the right to edit or abridge material submitted and in any event the University shall be vested with the sole right to editorially change any material submitted by the University. The parties shall exercise good faith in completing any necessary changes prior to accepted deadlines for the submission of copy.

The University shall be subject to those deadlines extended to other advertisers in the Florida Flambeau for submission of advertising and news under this agreement.

5. The parties agree that the obligation of the University is conditioned upon the publication of the Florida Flambeau by the Foundation for at least thirty-two (32) weeks or 160 issues within the period covered by this agreement. It is further agreed that the obligations of the University are conditioned upon the good faith adherence by the Foundation to the standards of quality as accepted by the publications corporation which is attached hereto and made a part hereof by reference as Exhibit "A", and compliance by the Foundation with those conditions of the lease agreement and publication agreement executed by the parties this even date.

6. This agreement and the obligations of the University thereunder are subject to the availability of funds lawfully appropriated or approved for the purposes herein stated.

STATE OF FLORIDA, DEPARTMENT OF  
EDUCATION, DIVISION OF UNIVERSITIES,  
FLORIDA BOARD OF REGENTS, ACTING FOR  
AND ON BEHALF OF THE FLORIDA STATE  
UNIVERSITY:

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

(CORPORATE SEAL)

THE FLORIDA FLAMBEAU FOUNDATION, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its President

Its Corporate Secretary



## I. ADVANCE PAYMENT REQUEST

The following are estimates made by the Corporation for expenses to cover the first two weeks of their existence.

### SALARIES

Flambeau	\$ 900.00	
Advertising	1080.00	(Manager-\$120 + 2% gross-estimated \$8,000 brings him to \$280 - salesmen = \$800.00)
Chairman of Board	40.00	
Business Office	125.00	(Carolyn Jones' salary)
Sub-Total	\$ 2145.00	
PRE-PRINT	\$ 680.00	(Based on 40 pags. at \$17.00/pg. from FSU)
Sub-Total	\$ 680.00	

### PRINTING

Delivery	\$ 12.00	
Halftones @ \$2 ea.	60.00	(30 halftones)
Spot Color	60.00	(2 pages)
Base cost 40 pgs.	930.00	
Sub-Total	\$ 1062.00	

### GENERAL OPERATING EXPENSES

Telephone - 2 weeks; \$65.00	
+ \$90.00 service fee to have 6 phone numbers changed from 4810 to 4620	\$ 155.00
Long Distance	50.00
Subscriptions and Dues	25.00
Xerox	20.00
Photography (30 pictures at \$6.00 each)	180.00
Accounting Service (providing FSU Admn. pays the \$200 installation set-up fee)	100.00
Travel	0.00
Postage	32.00
Supplies (could be higher based on new forms required to be printed)	124.00
Sub-Total	\$ 686.00

The total for salaries, pre-print, printing, and general operating expenses is . . . . . \$ 4753.00

## Chapter Five

### Case Study: The University of Florida

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#### A. PLAN FOR INDEPENDENCE

To: President

From: Ad Hoc Committee for an Independent Student Newspaper

Date: January 4, 1973

Herein is presented a plan for the independent operation of a student newspaper to serve the University of Florida community with a regular source of periodic communications. The plan represents the unanimous decision of the individuals sitting as an ad hoc committee and is predicated on several general considerations as follows:

1. Any newspaper to be truly independent must be accountable only to itself financially and must be responsible to its readers by their acceptance or rejection of it as a physical entity; hence, the newspaper cannot accept any form of subsidy from the community it seeks to serve and expect to remain free from controls of that community and it cannot receive funds from its readers except those funds which each individual reader of his own volition chooses to give it.

Result: It is recommended that after February 1, 1973, the independent paper will receive no funds or other support from the University, except for the purchase of advertising, and support as specified herein during the transition period ending August 31, 1973. No further allocation of activity fees should be made to the existing paper or the independent successor after fall quarter 1972.

2. All institutions are not only identified by what they actually are, but also by what they are believed to be as a result of their heritage and relationship to other institutions; hence, a newspaper as an institution cannot be truly independent in the public mind unless it divests itself of those things which reflect on its heritage and its relationships.

Result: The name of the independent newspaper must include wording in its display that reflects its independence from the institution with which it was long associated, and its physical offices must be distinctively separated from those of the institution to which it was formerly attached. It must contain, in each issue, a statement disassociating itself from that institution.

3. Because of the nature of its peculiar mission, and independent student newspaper serving a university community would best be operated by a non-profit corporation.
4. Because of the difficulties of capitalizing a nonprofit corporation, and because of the benefits resulting to the University community by having circulated a periodic organ of communications, the University should assist in creating a climate in which the corporation can raise its necessary capitalization.

- Result:
- A. The University should, using Student Publication Reserves, pay salaries of full-time employees of student publications agreed upon between the University and the corporation through June 30, 1973, the sums so paid to be a credit to the University for communications space in the independent newspaper. If any of the present employees of the Board of Student Publication are not retained by the corporation, the University should attempt to find other employment for them in the fashion as for other employees whose jobs have be abolished.
  - B. Inventory on hand, as of January 31, 1973, shall be paid for by the corporation in the form of communications space.
  - C. In return for the corporation's publication and free distribution of the student newspaper on campus through the summer quarter 1973, the University will:
    - (1) Lease to the corporation until August 31, 1973 all equipment owned by the University now in use by the Alligator at a value agreed upon by the University and the corporation, and approved by the appropriate state agency.
    - (2) Lease to the corporation the space in the J. Wayne Reitz Union presently occupied by the Alligator for the period February 1, 1973 to August 31, 1973 under terms and conditions to be agreed upon by the University and the corporation and approved by the appropriate state agency.

The corporation must agree to publish the newspaper at least three times per week in the winter and spring quarters and at least once a week in the summer quarter, during the time in which classes are being held at the University.

- D. Current student publications contracts shall be assigned to the corporation with the corporation assuming responsibility for meeting the University obligation thereof.
  - E. Accounts receivable for advertising or other services incurred through January 31, 1973 should be assigned to the corporation as payment for communications space to be furnished by the corporation to the University.
- 5. It is agreed that a nonprofit corporate entity is a proper owner and operator of the independent paper. Because of the support afforded the proposed entity in the transitional period, the corporate charter must provide that the University of Florida become the owner of the assets of the corporation should the corporation at any time cease to publish a newspaper serving the campus community as provided for in this plan.
  - 6. Because the principal mission of an independent student newspaper will be to propagate information and opinion to students, because the success

of an independent newspaper will depend mainly on those in the day-to-day operation of the newspaper and because editorial freedom must be maintained, the board of directors should have the following characteristics: (1) a majority of its members should be students; (2) a majority of its members should be engaged in the day-to-day operation of the newspaper; and (3) a favorable balance must be maintained between participants engaged in editorial pursuits and those engaged in business pursuits.

Result: The board is to be composed of the following as proposed by the corporation principals who have agreed to this plan:

General manager of the newspaper  
Assistant general manager in charge of advertising  
Editor  
Managing Editor  
Student Business Manager  
Graduate student with journalistic experience or education  
A person from outside the corporation engaged in full-time journalistic pursuits

7. The corporation must agree to:
  - A. Publish a newspaper through August 31, 1973 and distribute it free at least three times per week in winter and spring quarters and at least once a week in the summer quarter during the time in which classes are being held at the University. The distribution will be at drop points agreed upon by the University and the corporation. The newspaper is to contain information, news and comment of particular interest to members of the University community and notice of events occurring on the University campus.
  - B. Accept and publish at regular advertising rates plus actual cost of composition in format designed by the University such copy for the benefit of student communications as furnished by the University, not to exceed eight pages in one week, the cost thereof to be offset against the amount due the University as provided herein in paragraphs 4 A, B. and E.
  - C. Use good business practices and responsible diligent collection efforts of the accounts receivable assigned to the corporation, and make monthly reports to the University of collections made, and amounts remaining due.
  - D. File with the University monthly a statement of income, expenses, and assets of the corporation until such time as the sums paid by the University for advertising have been consumed by the University. During this time the University Auditor shall have the right to examine the financial records maintained by the corporation.
8. To facilitate an orderly transfer of the student newspaper at the earliest possible time and to give sufficient time to the careful preparation of all documents affecting this transfer, University attorneys should be assigned to work with any attorney or attorneys of the nonprofit corporation at the earliest practicable date. Considerable documentation is

available and detailed plans of the nonprofit corporation are already on file with us and will be made available to University attorneys at their bidding.

AD HOC COMMITTEE FOR AN INDEPENDENT  
STUDENT NEWSPAPER

BY: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

## B. STATEMENT BY PRESIDENT

At Press Conference on Student Publications

January 9, 1973

Much has been said and written in recent months about student publications and the Florida Alligator at the University of Florida. The Sunshine Law could not have been brighter on any other subject.

This report addresses itself specifically to the future operation of the independent successor to the Alligator. I shall be glad to answer questions about it, but first I want to give you some information separate from the plan, but brought into focus because of it.

The new corporation has been given the privilege of choosing those full-time employees of the Board of Student Publications whom they want to assist in the new publication. The University will continue to pay their salaries to June 30, 1973. It is estimated this will require from \$30,000 to \$35,000 from the Student Publications Reserve Account.

For those employees not employed by the independent paper, the University will attempt to find other employment for them in the same fashion as it does for other employees whose job have been abolished.

Publication of the year book, the Seminole, will be handled by some of the existing professional staff and the existing student staff of that publication and financed from Student Publication Reserves.

The \$1.30 previously allocated to student publications from the Activity Fee ended with the fall quarter. One dollar (\$1.00) of this sum will be reallocated on a student per capita basis to the colleges which have or which establish student councils or agencies for conduct of programs which will add to student academic enrichment and extracurricular experience. The criteria under which these programs and student councils function will be developed shortly by the Office of Student Affairs in cooperation with Student Government. This decision was reached through discussions with the Acting Vice President for Student Affairs, and the President of the Student Body.

Decision on reallocation of the remaining 30¢ will be made later, on recommendations by the Vice President for Student Affairs after consultation with Student Government and other campus agencies and units.

I repeat my thanks to the committee. I believe they have come up with a sound, workable plan. Its implementation calls for the new newspaper to be published completely free from any restraints by me or by the University Administration.

The University Attorney will assist the Ad Hoc Committee and those concerned with the independent corporation in settling all details and doing all things necessary to be done to enable the corporation to commence operations on February 1, 1973.

C. REMARKS BY PRESIDENT AT SPECIAL MEETING OF THE UNIVERSITY SENATE,  
JANUARY 22, 1973.

Ladies and Gentlemen of the Senate, this meeting was called to present to you, for discussion, the plan for independence of the Alligator, as proposed by the Ad Hoc Committee.

I gave my support to the plan before presenting it to you for these reasons:

First, I felt it absolutely essential that this matter come to this body in the posture of a well-developed plan which had my approval, rather than our having before you several different plans for discussion, or this body attempting to draft one on the floor.

It was the responsibility of the Planning Committee to receive and consider all proposals and views and they did this. Not only did that Committee consider your resolution, the points made in it, receive proposals from all who cared to offer them, consider the experience of other universities in matters such as this, consult with editors of newspapers across the state, held a public hearing at which all were invited to express their views. A number of persons did.

The charge to the Committee was to prepare a plan for independence of the Alligator. But the Committee properly did a great deal more. It dealt with the basic question of independence and freedom of the paper and whether this condition could exist with public subsidy and retain effective connection to this University. It dealt with the important question of whether the paper could survive financially, independent of public subsidy and in a location off-campus. And with the advice of counsel, it dealt with the questions of what support the University should and could legally give to an independent corporation in a transitional period.

I am certain, that had this Committee felt independence was neither desirable nor workable, it would have reported it and I would have had to accept that finding. But not only did the Committee in its work reach an independent conclusion that the best answer for the Alligator and the University was independence, but that it could succeed. The present editor of the paper and, as I understand it, some student leaders also reached the same conclusion.

There was a second reason for my approving the Planning Committee plan before presenting it to you. That Committee, understandably, could not finish its work and make the report by the original deadline of November 15th. However, it had hoped to do so before the end of the Fall Quarter. This, too, became impossible so the recommendations of that Committee were not submitted to me until January 5th.

And yet, the Committee says, and those with whom they worked, that the financial success of the paper depended upon the independent publication having as many months of advertising income in the winter and spring quarters as possible. The Committee, therefore, recommended the date of February 1 be the date for the change. Now, this date required that a number of important actions be taken immediately—plans be made by the proposed directors of the independent corporation and by the University to assist in that transition. Understandably, they could not be done without a go ahead



signal that was involved in approval by me and so I gave it.

The third reason for accepting the recommendation at that time is that it was consistent with the objectives sought in the position that I had already taken when the Senate passed its resolution and is therefore a reaffirmation of the best possible solution I could find with the advice and the careful study of experts in the matter. Also, because I was advised that in the course of the Committee study the student editor and others publicly expressed the view that they, too, had concluded that independence from the university, including independence from reliance on subsidy by the state through the activity fee, was the best answer for the Alligator.

Some have charged that I have shown ill will against the Alligator and that the plan to make it independent is punitive action on my part. These charges are unfounded. From the beginning of this controversy, which has extended on this last occasion for more than a year, my motivation and the objectives sought have been the same. It is, and has been, to either establish a method of insuring that the affairs of the paper are conducted under professional supervision and guidance consistent with the University's responsibility as an educational institution and as owner and publisher, or to make the paper truly independent, relieving it of any control by or interference from the University, and relieving the University of all responsibility and accountability for it.

The principal result and advantage of independence for the Alligator, and I think one of the most significant reasons militating for it, is to excise from this University life a focal point for infectious discord and conflict between the University Administration and the student press, and particularly its editor—a situation which is inherent in the Board of Regents regulation which makes the University the owner and the president the publisher of student publications in the face of the Attorney General's opinion which in effect says that, while it's all right to make the University president the publisher, he cannot exercise any of the rights of publisher except for a violation of law—and that after the fact. And this, coupled with the understandable demands of student editors from interference or threat of interference by the University makes it clear that independence has to be the answer. Forget all the legal niceties involved, the opinions, it ought to be apparent that a search for accord, the removal of a cause of conflict that common sense says that the inconsistent, unworkable arrangement we now have should not be continued if there is a way to solve it without damaging the right of student and others to voice their views, and without sacrificing the other advantages which come from having a campus paper.

What most forget is that the conflict between the student editors and this University Administration is not a new thing. While the circumstances have changed, I am told it has been a recurring affair almost every year since the World War II days and even before that, although there was in effect then an editor-publisher plan, as I understand it, for this University.

Others will speak on the long range history of conflict, the studies that have been made, the recommendations that have been made, and the inaction that's followed in attempting to reach any solution. Let me recount to you, if I may, the history of events since October 1971 when the then student

editor published information in violation of a presumptively valid state law and in violation of Board of Student Publications regulations, after being requested not to do so, first by the Vice President for Student Affairs and ultimately by me. You recall that the editor was not removed. Rather, because of a pertinent federal court decision, I asked the Attorney General for an opinion clarifying the University president's role under the Board of Regents regulations which make him publisher. About the same time, in November, 1971, the Board of Student Publications, understanding the problems appointed a committee to study the future of the Alligator. In April, the Attorney General rendered the opinion I've mentioned. In May, the Board of Student Publications filed its report. No action was taken upon it. Then the nine university presidents asked the Board of Regents to amend its regulations to relieve them of the untenable situation in which they were put. The Board of Regents appointed a committee to study the matter and held a public hearing—many from this University appeared and spoke. The Board of Regent's committee reported at the July meeting but its report was not adopted.

Then, at the suggestion of the then chairman of the Board of Student Publications, a meeting was held; there were some 30 persons there, in my office—members of the Board of Student Publications, student leaders, the editor of the local paper, and others—all to sit and discuss what ought to be done to solve the problem. We took the Board of Student Publication's study as a point of beginning. It outlined six possible ways to go. I asked all at that meeting to make their recommendations with any proposals they were willing to give and come back five days later on August 2. Understandably, that is a short period of time. The Board of Student Publications voted that it would make no recommendation but urged another six months for study.

At this time, depending on information upon which I relied, that the independent student newspaper could not make it financially, I proposed to the Board of Regents that we put into effect at this University the same plan that is in effect at four others of the state universities—that is, an editor-publisher plan under which the paper would be operated by a professional but produced entirely by student, and for those students, the right to continue with their investigative reporting and criticism of the University and me as had been the custom. The Board of Regents did not accept that proposal of mine nor did it change its policy. In the meeting, the Board asked me not to change the method of operation of the Alligator here but to continue. However, at the October meeting of the Board of Regents, I explained the plan which had been prepared in which we would seek independence here, as I explained it to this body in September and told you that I was taking it to the Board of Regents. The Board then rescinded its previous action and adopted the following motion:

"That the actions of the President be approved, and that the President be authorized to conduct such experiments as he may determine."

Following that, the new Board recommended by the existing Board of Student Publications was appointed. And that board of 11 persons, I believe most were appointed by persons other than the President, that group could not

seat itself for a variety of reasons, which we need not deal with.

Then on the recommendation the the Vice President, four of those appointed by others to that Board that couldn't seat itself, and Mr. \_\_\_\_\_ of the Business Office who had been appointed to that Board by me, were asked to serve as a committee to consider the matter and draft a proposal by November 15 for independence. That Board, and they can speak for themselves, did so without any interference from me. I believe you know the rest of the story.

I have repeatedly said and I say to you again that I do not want to be the publisher of Student Publications; I do not want to in any way exercise any responsibility over it or to interfere with the freedom of that publication. I think that the facts are known, and my position. To analyze carefully I think you will find that I am perhaps more in favor of true freedom of the press than some who advocate it in other ways. I would say to you again, as professional societies have found, that what is involved here is not a freedom of the press classification. Another thing I think I must say to you. I've never on any occasion, in the more than five years since I have been here, attempted to exercise authority over the Board of Student Publications, to whom that authority as publisher has been delegated, or over the Vice President for Student Affairs, to whom that Board reports; and only in the Sachs case have I requested an editor not to publish material and that was because it violated the law.

I have criticized the Alligator on occasion, as I have other papers, and I hope the press is not above this. However, the unfortunate result is that when I criticize the Alligator, or any member of the Administration does, it is taken to be a threat or interference with the freedom and, again, the focal point of infectious discord and conflict exacerbates and becomes a running sore.

I say to you again that there is no reason for the administration of the University or the student editors, as they come and go, to be in this intolerable situation that has built into the conflict that always is a problem.

D. IMPLEMENTATION PLAN

January 24, 1973

Responsibility for operations and administration for student publications which have been assigned to the Vice President for Student Affairs by the President will be further delegated as follows:

- A) The Board of Student Publications which was appointed by the President for Academic Year 1972-73 will be relieved of its responsibilities effective January 29, 1973.
- B) Responsibilities for student publications currently charged to the Board of Student Publications are reassigned to the Director of the Union, effective January 29, 1973.
- C) The Acting Director of Student Publications shall be responsible to the Director of the Union for all functions of the Student Publications office which pertain to the publication of the Seminole and the completion of arrangements to terminate support for the Florida Alligator in accordance with approved contracts.
- D) The General Manager, Student Affairs Coordinator, shall be responsible to the Director of the Union for personnel administration and all other functions performed by the Student Publications staff in support of the Florida Alligator and/or the Independent Florida Alligator, Inc., throughout the period required by contractual arrangements.
- E) The Vice President for Administrative Affairs has directed the office of the University Controller to provide audit assistance required to:
  - 1) enable the close-out of financial operations and services provided to the Florida Alligator, effective January 31, 1973; and
  - 2) to complete the inventory and transfer of consumable supplies and accountability for facilities and equipment provided to the independent newspaper corporation by the Office of Student Publications during the transition period provided in contractual agreements.
- F) The Director of the Union is requested to provide the Vice President for Student Affairs with regular reports on the operations in support of the Seminole and of the independent newspaper corporation, to include recommendations as appropriate.

E. ARTICLES OF INCORPORATION OF CAMPUS COMMUNICATIONS, INC.

(A Corporation Not for Profit)

ARTICLE I - NAME

The name of this nonprofit corporation shall be Campus Communications, Inc. Its principal office shall be in the City of Gainesville, County of Alachua, State of Florida. Its initial mailing address is Post Office Box 13266, University Station, Gainesville, Florida 32601.

ARTICLE II - PURPOSES

Section 1. The business and purposes of this organization shall be to bring together those persons interested in the preparation and publishing of a newspaper, daily or otherwise, to be published in the interests of the students, faculty, and staff of the University of Florida at Gainesville, Florida.

Section 2. This corporation's major function will be to publish, daily or otherwise, a newspaper containing news of the student, faculty, and staff of the University of Florida. This newspaper shall be called The Independent Florida Alligator and shall be identified in its flag and masthead as being published independently of the administration and management of the University of Florida; specifically, the phraseology to be used in the masthead after the name of the newspaper is the following: "Published by Campus Communications, Inc., Gainesville, Florida, not associated with the University of Florida."

ARTICLE III - QUALIFICATIONS OF MEMBERS

The members of this corporation shall be the following: \_\_\_\_\_

and such other persons as may from time to time be elected to membership by the members of the corporation. The corporation shall have one class of membership. The qualifications, rights, and method of selection of members of this class shall be as provided in the By-Laws.

ARTICLE IV - PERIOD OF EXISTENCE

The period of existence of this corporation shall be perpetual.

ARTICLE V - SUBSCRIBERS

The names and residences of the subscribers and incorporators are as follows:

## ARTICLE VI - MANAGEMENT OF CORPORATION

Section 1. The affairs and business of this corporation shall be conducted and managed by the Board of Directors of the corporation.

Section 2. The officers of the corporation shall be a chairman, a vice chairman, and a secretary, who shall be selected from among the Board of Directors.

Section 3. The duties of the Board of Directors shall be to publish The Independent Florida Alligator, to hire the general manager and editor of said newspaper, and to establish the general policies for the conduct of business.

Section 4. The number of directors shall be not less than three and initially shall be seven. A majority of one of the Board of Directors at any time shall be selected from among the undergraduate and graduate student body of the University of Florida. As an example, if there are three directors, two shall be from said described class; if there are five directors, three shall be from said described class; if there are seven directors, four shall be from said described class. "Student" is herein defined as full time student as defined by the University of Florida, and as such definition by the university may from time to time change.

Section 5. The names and addresses of those persons who are to serve as directors of this corporation until succeeded as provided herein or in the By-Laws, and the classification of each (student or nonstudent) are as follows:

Section 6. The members of the Board of Directors shall include the general manager, assistant general manager, student business manager, student editor, student managing editor, a professional journalist, and a student or graduate student with a background in journalism who is not employed by this corporation. Board members shall be elected by majority vote of the board.

Section 7. The Board of Directors shall meet annually and as otherwise established from time to time in the By-Laws.

## ARTICLE VII - BY-LAWS

Section 1. The Board of Directors may provide for such By-laws for the conduct of this corporation's business and the carrying out of its purposes as may be deemed necessary from time to time.

Section 2. Upon proper notice to all members, the By-laws may be amended, altered, or rescinded by a majority of the Board of Directors (that is, a majority of the total number of directors, whether or not they are present) at any regular meeting, or any special meeting called for that purpose.

## ARTICLE VIII - CHARTER AMENDMENTS

These articles of incorporation may be amended at any regular meeting of the membership of the Board of Directors or at any special meeting called with notice for that purpose, by a majority of the total number of members of the Board of Directors, whether or not they are all present at the meeting. No proxy votes will be permitted for charter amendments. Article No. XI concerning distribution of assets upon dissolution or cessation of publication may not be amended. The disclaimer hereinabove quoted following the name of the paper in the masthead may not be amended.

## ARTICLE IX - NONPROFIT STATUS

This corporation shall not have or issue shares of stock. It shall pay no dividends or pecuniary profits whatever to its organizers or managers; it may employ at a salary as employees of the corporation those persons who also occupy positions as officers and directors.

## ARTICLE X - OFFICERS

Section 1. The names of the officers who are to serve until the first election are \_\_\_\_\_, chairman; \_\_\_\_\_, Vice Chairman; and \_\_\_\_\_, Secretary.

Section 2. Election of officers shall be in accordance with the requirements stated in the By-laws.

## ARTICLE XI - DISTRIBUTION OF ASSETS UPON DISSOLUTION OR CESSATION OF PUBLICATION

Section 1. No person, firm, or corporation shall ever receive any dividends or profits from the undertaking of this corporation, and, upon dissolution of this corporation, all of its assets shall be distributed to University of Florida Foundation, Inc., for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the Dean of said college and the President of said university. None of the assets shall ever be distributed to any member, officer, or trustee of Campus Communications, Inc.

Section 2. In the event Campus Communications, Inc., shall cease to publish a newspaper, the assets of this corporation shall be distributed to University of Florida Foundation, Inc., for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the Dean of said college and the President of said university.

## ARTICLE XII - MEETINGS

Section 1. This corporation shall meet annually, at a time and place to be determined by the By-laws.

Section 2. The corporation may provide in its By-laws or otherwise for the holding of additional meetings and any special meetings, and shall provide notice of all such meetings.

Section 3. A majority of the members of this corporation shall constitute a quorum for the holding of any noticed meeting of the Board of Directors.

#### ARTICLE XIII - PROXY VOTES

Proxy voting shall be permitted, except where prohibited as hereinabove outlined, as to specific questions only. Blanket or general voting authority shall not be permitted.

#### ARTICLE XIV - AGENT

The name of the initial resident Agent is \_\_\_\_\_.

#### ARTICLE XV - SUBSCRIBERS

IN WITNESS WHEREOF, the undersigned subscribing incorporators have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 1973, for the purpose of forming this corporation not for profit under the laws of the State of Florida.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)



F. AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1973 by and between Board of Regents of the State of Florida, acting for and on behalf of the University of Florida, hereinafter referred to as the university, and Campus Communications, Inc., a Florida nonprofit corporation, hereinafter referred to as the corporation,

W I T N E S S E T H :

WHEREAS, the university, with approval of the Board of Regents, has approved and accepted a plan submitted to it for the publication of the newspaper heretofore known as The Florida Alligator by an independent, nonprofit corporation, and

WHEREAS, the corporation has been organized and incorporated for the purpose of publishing a newspaper under the name of The Independent Florida Alligator in accordance with the plan accepted by the university mentioned in the immediately preceding paragraph, which plan is incorporated in the memorandum dated January 4, 1973, to the President from Ad Hoc Committee for an Independent Student Newspaper, which is attached hereto and made a part hereof, marked Exhibit A, and

WHEREAS, it is the purpose of this agreement to detail the rights and duties of the parties to each other, in order to execute and put into operation the agreement the parties have reached as per Exhibit A, Items 4A, B. C(1) (2), D, E, 5, 6, 7A, B, and D, [none of the exhibits are included herein.]

NOW, THEREFORE, in consideration of the agreement of the corporation to distribute its newspaper at no cost to the students, faculty and staff of the university from February 1, 1973, through August 31, 1973, at least three times per week in winter and spring quarters, and at least one time per week in the summer quarter during the time in which classes are being held at the university, and in consideration of the corporation's publishing at regular advertising rates (the published open rate) plus actual cost of composition in format designed by the university such copy for the benefit of the university community as furnished by the university, not to exceed eight pages in one week, the university agrees to do the following as itemized hereinbelow, in consideration of which the corporation agrees to do what is set out hereinbelow.

1. The university agrees to pay the gross salary of the employees named in Exhibit B attached hereto [Exhibit B is not attached, nor are any of the other enumerated exhibits] and made a part hereof at the gross salary shown thereon from February 1, 1973, through June 30, 1973. In the event an employee resigns or is fired, the university agrees to pay to a replacement the same sum for the same period. The corporation recognizes that the said employees are bound to abide by the rules and regulations of the State of Florida that pertain to state employees or University of Florida employees, as well as University of Florida regulations pertaining to its employees.

A. The University recognizes its obligation to said employees for annual leave accrued through January 31, 1973, and such leave may be taken by said employees in accordance with established practices of the University of Florida.

2. The corporation will reimburse to the university in the form of copy published in the newspaper as per item 7B of Exhibit A an amount equal to the value of sums paid by the university for state health insurance for the employees as listed on Exhibit B and amounts for fringe benefits matching (F.B.M.) representing 4 per cent (4%) for pension fund and 5.85 per cent (5.85%) for the Employees' FICA as contained in the second column on Exhibit B attached hereto, which sum is included in the total gross salary amounts indicated on Exhibit B, for which amount of \$28,034.21 the corporation agrees to furnish and publish copy to the university in accordance with item 7B of Exhibit A. In the event the vacant position is filled, then such amounts as are paid for gross salary by the university shall be returned to the university by the corporation in the form of copy as per item 7B of Exhibit A.

3. The university agrees to transfer to the corporation as of January 31, 1973, the inventory listed on Exhibit C attached hereto and made a part hereof. The said value of inventory is \$7,157.91. The corporation agrees to publish copy in accordance with 7B to the value of said \$7,157.91.

4. The university does hereby lease to the corporation from February 1, 1973, through August 31, 1973, the following space in the Union at the University of Florida Room 330, 330A, 330B, 330C, 330D, 332, 333, 335, 337, 338, 339, 339A, 339B, 340, 365, 365A and B56, for a total of 3,550 square feet. The university shall provide to the corporation heating, air conditioning, electricity, and janitor service for the leased premises during the term of the lease at the expense of the university, providing that the university shall not be responsible for any interruption in such services necessary for maintenance, repair, or replacement of equipment or resulting from an interruption of sources of power. The corporation agrees that it will be responsible for all telephone charges for telephones installed on the subject premises and telephone service to the subject premises. The corporation shall, during the term of this lease, keep the interior of the subject premises in as good a state of repair as it is at the time of the commencement of the term of the lease, reasonable wear and tear excepted. At the expiration of the term of this lease, the corporation will peaceably yield up to the university the subject premises in good and tenantable repair. The corporation shall have no right to sublet all or any part of the subject premises or to assign all or any part of the subject premises. The provisions, terms, or conditions of this lease agreement shall not be construed as a consent of the State of Florida to be sued because of said leasehold. The university at all reasonable times may enter into and upon the subject premises for the purpose of viewing the same and for the purpose of making any such repairs as it deems necessary. The corporation shall use the subject premises solely for the purposes intended by this agreement between the parties, and the corporation will not make or suffer any unlawful improper, or offensive use of the premises or any use or occupancy at all contrary to the laws of the State of Florida or the ordinances of the City of Gainesville or Alachua County, or the rules and regulations of the Board

of Regents of the University of Florida now or hereafter made.

5. The university does hereby lease to the corporation from February 1, 1973, to August 31, 1973, the following equipment to be used by the corporation and returned to the university at the expiration of the term in its present condition, ordinary wear and tear excepted. Said equipment is itemized on Exhibit D attached hereto and made a part hereof. The corporation agrees to publish and distribute the newspaper at least three times per week in the winter and spring quarters and at least one time per week in the summer quarter during the time in which classes are being held at the university, all during the period of time from February 1, 1973 to August 31, 1973. Said newspaper will be distributed in bins furnished by the university at drop points on the campus as contained in Exhibit E, attached hereto and made a part hereof. The numbers on Exhibit E are estimates of the numbers of newspapers to be distributed at each point. The corporation agrees to maintain and keep neat the said bins and agrees to replace said bins as they wear out. The replacement bins will remain the property of the corporation. The university agrees to pay for the costs of the February 1 issue of the newspaper since these costs have been incurred prior to February 1, 1973. The current contracts such as Web Printers of Florida, Inc. and XEROX Corporation will be assigned to the corporation.

6. The university hereby designates the Director of Information Services as the person responsible for submitting university copy for publication in the "university page of record" to the corporation in accordance with item 7B of Exhibit A. The corporation agrees that it will not accept copy in accordance with item 7B from anyone other than the Director or his designee unless the university designates in writing additional persons or a substitute.

7. As an accounting device and procedure the corporation will issue bills to the university for the copy published so that the university may keep track of the amount it has used in order to determine the amount remaining to be used. Said bills will be sent to the Director of Information Services of the University of Florida.

8. Accounts receivable for advertising or other service incurred through January 31, 1973, are hereby transferred to the corporation. The amount of same will be determined by the University Auditor on his inspection of the books within thirty days from date. There is hereby allowed as a credit against said amount the sum of \$5,154.99, representing an allowance for bad debts. The responsibility to collect the accounts receivable is solely that of the corporation and the amount said corporation collects, whether it be more or less than the amount of the accounts receivable minus the above described allowance, is of no concern to the university, it being of benefit to the parties to fix in this contract a sum certain as an allowance for bad debts. The corporation will provide to the university the publication of copy in accordance with item 7B of Exhibit A in an amount equal to the total amount of accounts receivable less the sum allowed hereinabove for bad debts.

9. In connection with prepaid subscriptions the university will reimburse the corporation for the pro rata share of the prepaid subscriptions as of February 1, 1973, in the form of cash.

10. The corporation will acquire workmen's compensation and public liability insurance including insurance for libel as soon as possible.

11. The corporation hereby agrees that, in the event of its dissolution or in the event it ceases to publish a newspaper, it will distribute the assets of the corporation to the University of Florida Foundation, Inc. for the use and benefit of the College of Journalism of the University of Florida for such purposes as determined by the dean of said college and the president of said university.

12. The university does hereby transfer to the corporation the good will of the newspaper heretofore published.

13. The corporation does hereby agree to use the following disclaimer after its name in the masthead and flag: published by Campus Communications, Inc., Gainesville, Florida, not associated with the University of Florida. The university does hereby grant to the corporation an exclusive license to use the name The Florida Alligator in the following form only: The Independent Florida Alligator, as the name of the newspaper and in no other manner, reserving however to the university the right to use the name The Florida Alligator in any manner it sees fit other than The Independent Florida Alligator. The license for the use of the name herein granted to the corporation is for such period of time as the corporation publishes a newspaper. Upon the cessation of publication of a newspaper, said license terminates and all rights in connection with said name The Florida Alligator revert to the university. Said license is not assignable or transferable by the corporation without the prior written consent of the university.

14. In the event of any claim for Workmen's Compensation for which the university becomes responsible as a result of accident or injury arising during the period between February 1, 1973, and August 31, 1973, in connection with the employees paid by the university as hereinabove, the corporation agrees to reimburse the university for costs incurred and to accomplish said purpose will carry Workmen's Compensation Insurance in order to indemnify and save harmless the university.

15. In connection with any Unemployment Compensation claims that the university becomes required to pay as a result of the employment between February 1, 1973, and August 31, 1973, in connection with the employment of employees hereinabove set out, the corporation does hereby agree to save harmless and indemnify the university and does therefore agree to reimburse the university for such amounts.

16. The physical possession of the newspaper clipping file and the photo file, which includes the art file, shall be delivered to the corporation; however, the university retains title to the same, and upon dissolution of the corporation or upon cessation of publication of a newspaper, said files are to be returned to the university intact. The university shall have the right to inspect these files at any time during normal business hours.

17. The university hereby agrees to transfer to the corporation subscription lists.

18. It has been estimated that the accounts receivable would be between 50 and 60 thousand dollars (\$50-60,000), the estimate therefore being \$55,000 in accounts receivable on which Exhibit A is predicated. The university agrees that, if the value of accounts receivable (after the computation of subtraction for the allowance for bad debts as per item 8 above) is less than \$55,000, the university, in order to meet its commitment of that level of support for the interim period, will make up the difference between such amount and \$55,000 in kind, which may include the payment of student salaries. If student salaries are paid by the university, sections 14 and 15 hereinabove will also apply to these employees. In the event accounts receivable are in excess of \$55,000 after the subtraction of the allowance for bad debts, the accounts receivable in such excess amount shall be returned to the university to collect for its own account.

19. The obligation of the corporation to the university in the form of providing copy in accordance with item 7B of Exhibit A shall continue until such time as it has returned to the university the total value as hereinabove itemized, of support provided by the university to the corporation, in the form of salaries to employees, inventory of consumables transferred, and total amount of accounts receivable transferred.

20. The corporation agrees to file with the university monthly a statement of income, expenses, and assets of the corporation until such time as the sums paid by the university for advertising have been consumed by the university. During this time the University Auditor shall have the right to examine the financial records maintained by the corporation.

21. This agreement is not assignable without the written consent of the parties.

22. This agreement may not be modified except in writing.

23. This agreement is the entire agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have signed, sealed, and delivered these presents this \_\_\_\_ day of \_\_\_\_\_, 1973.

WITNESSES:

CAMPUS COMMUNICATIONS, INC.  
A Florida Nonprofit Corporation

\_\_\_\_\_  
\_\_\_\_\_

BOARD OF REGENTS OF THE STATE OF FLORIDA,  
for and on behalf of the  
University of Florida

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
President, University of Florida  
under special authorization of  
the Board of Regents

## Chapter Six

### NONPROFIT STATUS

The planner should, at an early date, make a "Request for Technical Advice" of the local Exempt Organizations Department, Federal Internal Revenue Service office for a ruling on the applicability of Section 501 (c) (3) of the Internal Revenue Code.

Section 501 (c) (3) reads as follows:

"Corporations, and any community chest, fund or foundation, organized and created exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Following is the letter requesting tax-exempt status prepared by the Kentucky Kernel, of the University of Kentucky.

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March 14, 1972

Exempt Organizations Department  
District Director  
U.S. Internal Revenue Service  
Cincinnati, Ohio

Dear Sir:

Enclosed please find the application of The Kernel Press, Inc. for tax-exempt status as an educational and literary corporation. It is our belief that the enclosed forms and addenda provide enough explanation and support to assure our corporation's tax-exempt status, but I have provided below a short history of The Kernel Press, Inc.'s formation and operation in order to provide background information for your review. Additional explanation, as required in form 1023, follow in duplicate in the remainder of this letter.

The Kernel Press, Inc. is a non-profit corporation composed of students, faculty, and administrators at the University of Kentucky, the primary purpose of which is to publish The Kentucky Kernel, the University's independent student newspaper.

The move toward incorporation was made in October, 1971, after a six-month reorganization period which began the previous April. Students decided to incorporate The Kentucky Kernel when the University of Kentucky Board of Trustees voted to phase out a cash subsidy of approximately \$40,000 a year which had been used to aid in covering printing costs of the newspaper. That subsidy was cut in half for the 1971-72 school year, and was officially spent by The Kernel Press, Inc. as of Jan. 1, 1972.

As of this time The Kernel Press, Inc. has taken over the function of publishing The Kentucky Kernel from the University and bears complete financial responsibility for the newspaper. The board of directors of The Kernel Press, Inc. is composed of students, faculty, and administrators of the University of Kentucky, as well as one former employee of The Kentucky Kernel newspaper and one practicing journalist, who serves in a non-voting advisory capacity.

It is my strong belief that The Kentucky Kernel deserves tax-exempt status as an educational and literary corporation. Prior to its severance from University financial support, The Kernel had served the students and faculty of UK as the campus' only newspaper for over 57 years. Now that it is independent, it remains as the University's only newspaper, serving a student body of nearly 20,000 and over 5,000 faculty and administrators.

In addition, The Kentucky Kernel and The Kernel Press, Inc. provide a valuable training ground for future journalists. Our offices, located in the UK Journalism



Building, have turned out dozens of newsmen who have gone on to be recognized for exceptional performance in their journalistic careers--among them Mr. William Arthur, former editor of Look Magazine, Mr. Jim Hampton, news editor of The National Observer, and Mr. James Aussenbaugh, state editor of the Louisville Courier-Journal.

The Kernel Press, Inc. and The Kentucky Kernel are the primary managers of an accredited class in the Department of Journalism at UK. The course, called "practicum," gives students credit for writing stories and performing editing and layout jobs which are part of The Kernel's daily routine. For all practical purposes, The Kentucky Kernel provides the only experience on a newspaper that most students in the UK Department of Journalism receive while in school. Without The Kentucky Kernel, the UK Department of Journalism would not have a "laboratory" newspaper for its students and would lose accreditation under the rules of the American Council for Education in Journalism.

We believe these examples of The Kernel's past and present efforts substantiate our claim as an "educational" corporation. As part of our "literary" function, we keep our editorial and opposite-editorial pages open for comment from the entire student, faculty, and administrative body of the University of Kentucky. Any contributions to these pages are edited only for length.

But apart from these functions, we believe our newspaper provides an invaluable communications link between the University and its students. We serve as the main disseminator of information to the student body and can claim 95 percent readership among both faculty and students at UK, according to readership surveys.

I hope these facts will provide adequate background to help you in considering our application for tax-exempt status at UK. Should you desire any additional information, please call me at my office, (606) 257 - 1755, collect.

Thanking you for your help, I am,

Sincerely,

**EXEMPTION APPLICATION**

(To be made only by a principal officer of the organization claiming exemption)

To be filed in duplicate  
with the District Director  
for your District.

For use of organizations applying for exemption under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, which are organized and operated (or will operate) exclusively for one or more of the following purposes (check purpose(s)):

- ☐ Religious ☐ Charitable ☐ Scientific ☐ Testing for Public Safety  
☒ Educational ☐ For the prevention of cruelty to children or animals ☒ Literary

Every organization that claims to be exempt must furnish the information and data specified in duplicate. If any organization fails to submit the information and data required, this application will not be considered on its merits and the organization will be notified accordingly.

This application shall be open to public inspection in accordance with section 6104(a)(1) of the Internal Revenue Code. See separate instructions for Form 1023 to properly answer the questions below.

1a. Full name of organization

**The Kernel Press, Inc.**

1b. Employer identification number

**61-0719986**

2. Complete address (number, street, city or town, State and Postal ZIP code)

**113 Journalism Bldg., University of Kentucky, Lexington, Kentucky 40506**

3a. Is the organization incorporated?

☒ Yes ☐ No

b. If "Yes," in which State and under which law (General corporation, not for profit, membership, educational, eleemosynary, etc.)? Cite statutory provisions.

**The Kernel Press, Inc. was incorporated under Ky. Nonprofit Corporation Act (KRS Ch. 273)**

4a. If not incorporated, what is form of organization?

**does not apply**

b. Date incorporated or organized

**10-4-71**

c. Month and day on which the annual accounting period ends

**May 31**

5a. Has organization filed Federal income tax return(s)? ☐ Yes ☒ No

b. If "Yes," form number of return filed and Internal Revenue District where filed.

**does not apply**

c. Year(s) filed

**does not apply**

6. After July 1, 1950, did the creator of your organization (if a trust), or a contributor to your organization, or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor, or a corporation controlled directly or indirectly by such creator or contributor, enter into any of the transactions (or activities) enumerated below? NOTE: If you have any knowledge or contemplation that you will be a party to any of the transactions (or activities) enumerated in 6a through 6f, check "planned" in the applicable block(s) and see instructions.

	Yes	No	Planned		Yes	No	Planned
a. Borrow any part of your income or corpus?		<input checked="" type="checkbox"/>		d. Purchase any securities or other property from you?		<input checked="" type="checkbox"/>	
b. Receive any compensation from you?		<input checked="" type="checkbox"/>		e. Sell any securities or other property to you?		<input checked="" type="checkbox"/>	
c. Have any part of your services made available to him?		<input checked="" type="checkbox"/>		f. Receive any of your income or corpus in any other transaction?		<input checked="" type="checkbox"/>	

7. Have you issued or do you plan to issue membership, stock, or other certificates evidencing voting power in the organization?

☐ Yes ☒ No

8a. Are you the outgrowth or continuation of any form of predecessor(s)?

☒ Yes ☐ No

b. Do you have capital stock issued and outstanding?

☐ Yes ☒ No

c. Have you made or do you plan to make any distribution of your property to shareholders or members?

☐ Yes ☒ No

d. Did you receive or do you expect to receive 10 percent or more of your assets from any organization, group of affiliated organizations (affiliated through stockholding, common ownership, or otherwise), any individual, or members of a family group (brother or sister whether whole or half blood, spouse, ancestor, or lineal descendant)?

☐ Yes ☒ No

e. Does any part or will any part of your receipts represent payment for services of any character rendered or to be rendered by you?

☒ Yes ☐ No

f. Are you now, have you ever been, or do you plan to be engaged in carrying on propaganda, or otherwise advocating or opposing pending or proposed legislation?

☐ Yes ☒ No

g. Do you participate or plan to participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office?

☐ Yes ☒ No

h. Have you made or do you plan to make any payments to members or shareholders for services rendered or to be rendered?

☐ Yes ☒ No

i. Does any part or do you plan to have any part of your net income inure to the benefit of any private shareholder or individual?

☐ Yes ☒ No

j. Are you now or are you planning to be affiliated in any manner with any organization(s)?

☒ Yes ☐ No

k. Do you hold or plan to hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation?

☐ Yes ☒ No

9. Has any State or any court (including a Court of Probate, Surrogate's Court, etc.) ever declared whether you were or were not organized and operated for charitable, etc., purposes? ☐ Yes ☒ No. If "Yes," attach copies in duplicate of pertinent administrative or judicial decisions.

**10. You must attach copies in duplicate of the following:**

- a. If incorporated, a copy of your articles of incorporation, or if not incorporated, a copy of your constitution, articles of association, declaration of trust, or other document whereby you were created setting forth your aims and purposes, a copy of all amendments thereto, and any changes presently proposed.
- b. A copy of your bylaws or other similar code of regulations, all amendments thereto, and any changes presently proposed.
- c. A complete statement of assets and liabilities as of the end of each annual accounting period (or as of the date of the filing of this application, if you were in existence for less than a year).
- d. A statement of receipts and expenditures for each annual accounting period of operation (or for the period for which you were in existence, if less than a year).
- e. A statement which clearly indicates what State statutes or court decisions govern the distribution of assets upon dissolution. (This statement may be omitted if your charter, certificate, or other instrument of organization makes provision for such distribution.)
- f. A brief statement of the specific purposes for which you were formed. (Do not quote from or make reference to your articles of incorporation, constitution, articles of association, declaration of trust, or other document whereby you were created for this question.)
- g. A statement explaining in detail each fund-raising activity and each business enterprise you have engaged in or plan to engage in, accompanied by copies of all agreements, if any, with other parties for the conduct of each fund-raising activity or business enterprise.
- h. A statement which describes in detail the nature of each of your activities which you have checked on page 1, activities which you sponsor, and proposed activities.
- i. A statement which explains fully any specific activities that you have engaged in or sponsored and which have been discontinued. Give dates of commencement and termination and the reasons for discontinuance.
- j. A statement which describes the purposes, other than in payment for services rendered or supplies furnished, for which your funds are expended or will be expended.
- k. A schedule indicating the name and position of each officer, director, trustee, etc., of the organization and the relationship, if any, by blood, marriage, adoption, or employment, of each such person to the creator of the organization (if a trust), to any person who has made a substantial contribution to the organization, or to a corporation controlled (by ownership of 50 percent or more of voting stock or 50 percent or more of value of all stock), directly or indirectly, by such creator or contributor. The schedule shall also indicate the time devoted to position and compensation (including salary and expense account allowance), if any, of each officer, director, trustee, etc., of the organization.
- l. A copy of each lease, if any, in which you are the lessee or lessor of property (real, personal, gas, oil, or mineral) or in which you own an interest under such lease, together with copies of all agreements with other parties for development of the property.

**SIGNATURE AND VERIFICATION**

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

3-14-72

Date

*Stephen Michael Weiss*

Signature of officer

Vice President

Title

GPO : 1971 O - 108-187

FORM 1023 (REV. 4-65)

\*Editorial comment as determined by the student editorial board sometimes deals with pending or proposed legislation and with candidates for public office and sometimes takes a stand with respect thereto.

March 14, 1972

Explanations to accompany application for tax-exempt status—Form 1023  
for the following sections:

- 8a. The Kernel Press, Inc. is incorporated primarily for publication of The Kentucky Kernel, which operated as the student newspaper of the University of Kentucky beginning in 1915. The Kernel Press, Inc. has, in effect, taken over the title of publisher from the University of Kentucky
- 8e. The Kentucky Kernel is financed almost totally from receipts for advertising sold to merchants in the Lexington, Ky. area and from advertising sales to national corporations.
- 8f.
- 8g. \*Editorial comment as determined by the student editorial board of the Kentucky Kernel sometimes deals with pending or proposed legislation and with candidates for public office, and sometimes takes a stand with respect thereto. Comment of this type does not constitute a substantial part of editorial comment of The Kentucky Kernel, and full opportunity to reply is made available to the general public. Editorials carried in the Kentucky Kernel are clearly marked as such.
- 8j. The Kernel Press, Inc. is indirectly affiliated with the Kentucky Kernel Press Club, a student organization registered on campus with the Dean of Students of the University of Kentucky. The purpose of the Press Club is to promote journalism education and to aid in publication of The Kentucky Kernel newspaper. All staff members of the Kentucky Kernel are members of the club. No dues are charged to members.
- 10f. Detailed attention is given to the formation of the Kernel Press, Inc. in the introductory letter to this application. The primary purpose for formation of the corporation was to assume publication of The Kentucky Kernel, and provide for dissolution of its assets in case of bankruptcy, in light of the severance between the Kernel and the University of Kentucky which was imposed by the UK Board of Trustees in April, 1971.
- 10g. The Kernel Press, Inc. has on occasion provided, without formal contract, minor printing services for student organizations on the campus of the University of Kentucky. Such services are performed strictly on a walk-in basis and revenues from them

are specially earmarked.

- 10i. The Kernel Press, Inc. has engaged in no activities which have been discontinued.
- 10j. The Kernel Press, Inc. has no plans to expend funds for any purposes other than for services rendered or for supplies furnished.
- 10k. No member of the board of directors of The Kernel Press, Inc. receives compensation for his services as a director. Directors devote approximately three hours per month apiece to meetings and committee-work related to their positions as directors of The Kernel Press, Inc.  
Three members of the board of directors of The Kernel Press, Inc. spend additional time on work related to The Kentucky Kernel and The Kernel Press, Inc. by virtue of jobs involving them with publication of The Kentucky Kernel newspaper. Their names, and the amount of time they spend per month, are indicated below with asterisks (\*).  
The board of directors of the Kernel Press, Inc. consists of: